

# Personnel

February 7, 2006

## ADMINISTRATIVE INSTRUCTION NO. 7-1 (Revised)

**SUBJECT: Substance Abuse Policy Manual**

**A. PURPOSE:** The City has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. Being under the influence of alcohol, or the presence of certain drugs in the body system, may pose serious safety and health risks not only to the user but to all those in contact with the user. By resolution, the City Council adopted an employee substance abuse and drug and alcohol testing policy and directed the Chief Administrative Officer to promulgate directives to implement that policy. This policy manual was adopted by the Chief Administrative Officer to provide a detailed explanation of the City of Albuquerque substance abuse policy and procedures. The purpose of this policy is to provide for a safer environment for all employees and the public and comply with Federal mandates regarding substance abuse in the workplace. It is intended that this Substance Abuse Policy Manual will be interpreted and implemented in a manner consistent with anti-discrimination requirements including the Americans with Disabilities Act. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

**B. APPLICABILITY:** Applicants for City employment in safety-sensitive positions are subject to pre-employment drug testing. Employees in safety-sensitive positions are subject to random, return to duty, follow-up, and post-accident drug/alcohol testing. Employees who are placed, transferred, or promoted to safety-sensitive positions are subject to drug/alcohol testing. All employees are subject to reasonable suspicion drug/alcohol testing. It shall be the responsibility of the Director of the Human Resources Department to determine which positions are safety-sensitive and to notify the affected employees of their status.

*Part 1* of this policy manual applies to public safety employees and all other employees who have been designated safety-sensitive pursuant to the City's own authority. Part 1 also requires reasonable suspicion testing for all City employees.

*Part 2* applies to employees who are safety-sensitive because they are required to hold a Commercial Drivers License by the regulations of the Federal Highway Administration.

*Part 3* applies to Transit Department employees who are designated safety-sensitive by the regulations of the Federal Transit Administration.

*Part 4* addresses the City's efforts to encourage employees to voluntarily seek assistance regarding substance abuse through the Employee Assistance Program.

---

Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

### PART 1

#### A. PURPOSE

The City has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. Being under the influence of alcohol, or the presence of certain drugs in the body system, may pose serious safety and health risks not only to the user but to all those in contact with the user. By resolution, the City Council adopted an employee substance abuse and drug and alcohol testing policy and directed the Chief Administrative Officer to promulgate directives to implement that policy. This policy manual was adopted by the Chief Administrative Officer to provide a detailed explanation of the City of Albuquerque substance abuse policy and procedures. The purpose of this policy is to

provide for a safer environment for all employees and the public and establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988. It is intended that this Substance Abuse Policy Manual will be interpreted and implemented in a manner consistent with anti-discrimination requirements including the Americans with Disabilities Act. Consistent with the Drug-free Workplace Act of 1988, all employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business. All employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

## **B. APPLICABILITY**

Applicants for City employment in safety-sensitive positions are subject to pre-employment drug testing. Employees in safety-sensitive positions are subject to pre-employment, random, reasonable suspicion and post-accident drug/alcohol testing. All employees are subject to reasonable suspicion drug/alcohol testing. It shall be the responsibility of the Director of the Human Resources Department to determine which positions are safety-sensitive and to notify the affected employees of their status.

Part 1 of this policy manual applies to public safety (police, fire, aviation police, open space rangers, sworn animal services, security and corrections) employees and all other employees who have been designated safety-sensitive pursuant to the City's own authority. Part 1 also requires reasonable suspicion testing for all City employees. Part 2 applies to employees who are safety-sensitive because they are required to hold a Commercial Drivers License by the regulations of the Federal Motor Carrier Safety Administration. Part 3 applies to Transit Department employees who are designated safety-sensitive by the regulations of the Federal Transit Administration. Part 4 addresses the City's efforts to encourage employees to voluntarily seek assistance regarding substance abuse through the Employee Assistance Program/Substance Abuse Program.

## **C. DEFINITIONS**

*Accident* means an occurrence associated with the operation of City equipment, machinery or vehicles, if as a result--

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- (3) One or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Adulterated Specimen* is a verified specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

*Alcohol Concentration* is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

*Breath Alcohol Technician (BAT)* is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

*Canceled Test* is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be canceled. A canceled test is neither positive nor negative.

*Collection/Testing Site* means a place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and/or for the purpose of providing breath for an alcohol test.

*Department of Transportation (DOT)* encompasses all DOT agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

*Designated Employer Representative (DER)* is an employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communication for the employer, consistent with the requirements of 49 CFR Parts 40, 382 and 655, as amended.

*Dilute Specimen* is a specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Disabling Damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT)* is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

*HHS* is the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

*Invalid drug test* means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.

*Negative Dilute* means a drug test result which is negative for the five drug/drug metabolites and/or the ten drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative Drug Test Result* for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended.

*Negative Alcohol Test Result* for an alcohol test means an alcohol concentration of less than 0.02 BAC.

*Non-negative test result* is a test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

*Positive drug test result* for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in Attachment B.

*Positive alcohol test result* for an alcohol test means a confirmed alcohol concentration of 0.02 BAC or greater.

*Positive test result* means a positive drug test result and/or a positive alcohol test result.

*Prohibited drug* means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 CFR Part 40, as amended. For sworn members of the Albuquerque Police Department, members of Aviation Police, and Open Space Enforcement Officers, *prohibited drug* shall mean marijuana, cocaine, opiates, amphetamines, phencyclidine, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene at levels at or above the minimum thresholds specified in Attachment A.

*Public safety employees* are sworn members of the Albuquerque Police and Fire Departments; sworn members of the Aviation Police, Open Space Rangers and Animal Services personnel; Security Officers, and the security staff in the Corrections Department.

*Refusal to test.* A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by Part 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take a second test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the “shy bladder” or “shy lung” procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process) or verbal or written refusal to provide a breath/urine specimen;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

*Safety-sensitive employee* means a City employee who performs the duties of a safety-sensitive position as determined by the Director of the Human Resources Department.

*Safety-sensitive position* means a City position which the Director of the Human Resources Department has determined should be classified as safety-sensitive. At a minimum, under Part 1 of this policy manual all public safety employees and employees with access to Controlled Substances will be classified as safety-sensitive. The following criteria shall be used as a guide for determining additional positions to be classified as safety-sensitive; the extent to

which the job responsibilities impact upon the safety of the public; the extent to which the job responsibilities expose the employee or co-worker to hazardous conditions; and, the extent to which the job responsibilities require responsibility for the physical safety of others.

*Substance Abuse Professional (SAP)* means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders and who is qualified to act as a SAP under 49 CFR Part 40.

*Substituted Specimen* means a verified specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Validity testing* is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

*Verified negative test* means a drug test result reviewed by a medical review officer and determined not to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 CFR Part 40, as amended or specified in Attachment A for SAFE 10 tests.

*Verified positive test* means a drug test result reviewed by a medical review officer and determined to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 CFR Part 40, as amended or specified in Attachment A for SAFE 10 tests.

#### **D. EDUCATION AND TRAINING**

This policy manual shall be provided to every City employee and training and education programs shall be made available. Employees will have access to the corresponding federal regulations including 49 CFT Part 40, as amended. Supervisors will receive a minimum of sixty minutes of drug and alcohol specialized training designed to promote the necessary skills to:

- Inform employees of this policy,
- Enforce this policy,
- Identify the signs of drug and/or alcohol use,
- Intervene constructively, and
- Integrate an employee effectively back into his/her work group following intervention and/or treatment.

Non-supervisory employees will receive a minimum of sixty minutes training on the effects and consequences of prohibited drug and/or alcohol use on personal health, safety, and the work environment.

#### **E. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following.

(1) *Illegally Used Controlled Substance or Drugs:* Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. All employees will be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine. Illegal use of

these five drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty. Additionally, sworn members of Albuquerque Police, Aviation Police and Open Space Officers will be tested for marijuana, cocaine, amphetamines, opiates, phencyclidine, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene. Illegal use of these ten drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty.

(2) *Legal Drugs*: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel in accordance with the Personnel Rules and Regulations. The employee is required to provide a written release from their personal physician indicating that the employee can perform their job functions while under the influence of the prescribed drug.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.

(3) *Alcohol*: The use of beverages containing alcohol or substances (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while on duty is prohibited. An alcohol test can be performed any time an employee is on duty.

## **F. PROHIBITED CONDUCT**

(1) All employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR PART 40, as amended, or defined in Attachment A for SAFE 10 tests.

(2) Each employee is prohibited from consuming alcohol while performing job functions or while on-call to perform job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The employee will subsequently be relieved of his/her on-call responsibilities and may be subject to disciplinary action.

(3) The City shall not permit any employee to perform or continue to perform their job functions if it has actual knowledge that the employee is using or has used alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.

(4) Each employee is prohibited from reporting to work or remaining on duty while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(5) Employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(6) No employee shall consume alcohol within four (4) hours prior to the performance of job functions.

(7) Employees are prohibited from possessing any amount of alcohol while on duty, unless the alcohol is manifested and is being transported as part of a shipment.

(8) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(9) Consistent with the Drug-free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business.

## **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to

comply with this provision shall result in disciplinary action, up to and including termination.

#### **H. PRE-EMPLOYMENT TESTING**

(1) All offers of employment for safety-sensitive positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a safety-sensitive position unless the applicant takes a drug test with a verified negative result.

(2) A non-safety-sensitive employee shall not be placed, transferred or promoted into a safety-sensitive position until the employee takes a drug test with a verified negative result.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of one year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred or promoted from a non-safety-sensitive position to a safety-sensitive position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with section N herein.

(5) If a pre-employment/pre-transfer/promotion test is canceled, the City will require the applicant to take and pass another pre-employment drug test.

(6) All applicants or employees being placed, transferred, or promoted from a non-safety-sensitive position to a safety sensitive position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the employee worked for the previous two years.

(7) In instances where a safety sensitive employee is on extended leave for a period of 90 days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions.

#### **I. REASONABLE SUSPICION TESTING**

(1) An employee of the City shall be required to undergo a drug/alcohol test if there is reasonable suspicion that the employee's alcohol or drug use could impair job performance and/or safety.

(2) Reasonable suspicion shall mean that there is objective evidence, based upon known specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that would lead a reasonable person to believe that the employee:

- a) is under the influence of alcohol or drugs while on duty; or,
- b) is in possession of or using, transferring, selling or purchasing alcohol or drugs during work hours including lunch or break or while on City property or in a City vehicle; or,
- c) is a public safety employee who has recently illegally possessed, transferred, used or sold a prohibited drug.

(3) An employee's admission of abuse of alcohol or use of prohibited drugs to a supervisor in his/her chain of command, an EAP Counselor, or a provider of medical services under contract to the City shall constitute reasonable suspicion when the use or abuse could impair job performance and/or safety and the employee is not already a participant in a drug/alcohol treatment program.

(4) The Department shall be responsible for transporting the employee to the testing site. Supervisors are to avoid placing themselves or others into situations which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on leave with pay status pending disciplinary action in accordance with section J herein.

(5) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee is a substance abuser, the health care provider shall refer the employee to the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the appropriate department director or his/her designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations.

(6) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation within 24 hours of the observation or prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the City's Medical Review Officer and shall be attached to the forms reporting the test results.

(7) An employee who submits a breath and/or urine sample for a reasonable suspicion drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **J. POST-ACCIDENT TESTING**

(1) As soon as practicable following an accident as defined in these regulations, the appropriate department director or designee shall cause the drug/alcohol testing of any safety-sensitive employee whose performance could have contributed to the accident using the best information available at the time of the decision. The employee shall be placed on administrative leave with pay until the test result is available.

(2) The appropriate department director or designee shall ensure that an employee required to be tested under this section is tested as soon as practicable and within eight (8) hours of the accident. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(3) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(4) In the rare event the City is unable to perform a City drug and alcohol test (i.e. employee is unconscious, employee is detained by law enforcement agency), the City may use drug and alcohol post accident test results administered by State and/or local law enforcement officials in lieu of the City test. The State and/or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(5) An employee who submits a breath and/or urine sample for a post-accident drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **K. RANDOM TESTING**

(1) Safety-sensitive employees are subject to random selection for drug/alcohol testing with no more than two hours notice.

(2) The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(a) The dates for administering unannounced testing of randomly-selected employees shall be spread reasonably throughout the calendar year; and,

(b) The number of safety-sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be not less than fifty (50) percent of the total number of employees in the pool.

(3) Each safety-sensitive employee shall be in a pool from which random selection is made. Each safety-sensitive employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the employee has been previously tested. There is no discretion on part of management in the selection and notification of the individuals who are to be tested.



(4) There shall be five (5) pools of safety-sensitive employees from which employees can be randomly selected. Each pool shall be maintained separately and no employee may be placed in more than one pool except as noted in subsection d below. The pools shall be designated as follows:

- (a) Employees designated as safety-sensitive by Federal Transit Authority regulations;
- (b) Employees required to operate a commercial class vehicle (other than Federal Transit Authority designated employees);
- (c) Public safety employees;
- (d) Police officers whose primary duty is the detection and suppression of drug law violations, who shall be the only employees whose names appear in two pools; and,
- (e) All other employees whose position has been designated safety-sensitive by the Director of the Human Resources Department.

#### **L. RETURN-TO-DUTY TESTING**

All employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event an employee returns to duty, the provisions of this section apply. All employees who previously tested positive on a drug or alcohol test or refused a test must test negative for drugs, alcohol (below 0.02 for alcohol) or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return to Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return to Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. Before scheduling the return to duty test, the SAP must access the employee and determine if the required treatment has been properly followed and the SAP has a reasonable level of assurance that the individual will stay drug and alcohol free. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety. An employee who submits a breath and/or urine sample for a return-to-duty drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when an employee is off duty.

#### **M. FOLLOW-UP TESTING**

All employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event an employee returns to duty, the provisions of this section apply. Employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the reasonable suspicion, post-accident, random, and return-to-duty testing program. An employee who submits a breath and/or urine sample for a follow-up drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **N. RESULT OF DRUG/ALCOHOL TEST**

(1) All testing results shall be reported to the Medical Review Officer or his/her designee. If the test results are negative, the Medical Review Officer or designee will notify the appropriate parties to that effect.

(2) If the City's laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the employee with the opportunity to discuss the test results. If the Medical Review Officer finds a valid medical explanation (i.e., prescription, medical treatment) for the non-negative test result, the MRO will verify and report this test as negative and no action will be taken. If the MRO's assessment finds no valid medical explanation for the non-negative result, he/she will verify the test as positive or refusal to test, and copies of the testing records shall be provided to the Substance Abuse Program Manager and the department director.

(3) As soon as practicable after receiving notice of a positive drug and/or alcohol test result, or a test refusal, the department director or designee shall ensure that the employee ceases performing any job function.

(4) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation will be paid directly by the employee or their insurance provider.

(5) Refusal to test shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

(6) The first instance of a positive test result or a refusal to test from a breath and/or urine sample submitted as the result of a reasonable suspicion, post accident, random, return-to-duty, or follow-up drug and/or alcohol test shall result in termination from City employment.

(7) A voluntary referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(8) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

#### **O. GRIEVANCE AND APPEAL**

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance.

(3) Any employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

(4) An employee who has reason to believe he/she was not properly designated as a safety-sensitive employee subject to drug/alcohol testing shall appeal their safety-sensitive designation to the Director of the Human Resources Department within thirty (30) calendar days of notification that his/her position has been designated as safety-sensitive. The Director of the Human Resources Department shall make an inquiry into the claim and forward his/her determination along with the employee's appeal to the Substance Abuse Policy Review and Appeals Board. Such an appeal shall not be available to police officers, corrections officers, firefighters, and those whose positions were designated safety-sensitive by Federal regulation.

(5) The Substance Abuse Policy Review and Appeals Board shall hear and decide objections to the designation of positions as safety-sensitive. The Board may also review administrative policies concerning substance abuse and drug/alcohol testing and advise the Mayor and City Council regarding such policies.

#### **P. RECORDS RELEASE**

(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the employee's department director or designee, Substance Abuse Program Manager, and SAP.

(3) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.

(4) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including and drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans.

#### **Q. DRUG TESTING PROCEDURES**

All drug/alcohol testing shall be conducted in a manner to assure a high degree of accuracy and reliability. All City drug/alcohol testing will be conducted using techniques, equipment, and laboratory facilities which have been approved the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended. Sworn members of the Albuquerque Police Department will be tested consistent with the SAFE TEN procedures in Attachment A. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

#### **R. PROPER APPLICATION OF THE POLICY**

The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

This Policy was adopted by the City of Albuquerque Chief Administrative Office, pursuant to City Council Bill No. R-237, on \_\_\_\_\_.

\_\_\_\_\_  
Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

### **PART 1 ATTACHMENT A**

Procedures for SAFE TEN tests for sworn members of the Albuquerque Police Department

#### **Positive Tests**

1. A licensed physician shall be responsible for receiving laboratory results generated by the City's SAFE TEN drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant bio-medical information. The Medical Review Officer (MRO) contracted by the City to review the positive SAFE 10 drug tests shall be that licensed physician.

2. All procedures for the collection and verification of positive results in SAFE TEN tests will follow the same procedures as in DOT 49 CFR Part 40, as amended with the addition of the following:

A. When a police officer has a positive test for any one of the SAFE TEN Drugs, the MRO will contact the employee and verify the test. A verified positive test result will be delivered to Substance Abuse Program Manager, who will notify the Chief of Police.

B. If the MRO verifies that the officer has a valid prescription for a SAFE TEN drug, the test will be verified as negative, but the MRO will discuss with the officer the requirement that the officer needs to inform the department that a

prescription medication covered under the SAFE TEN testing program is being used, as per APD policy #1-04-7.

C. The MRO will inform the officer that the Substance Abuse Program Manager will be notified of the use of medication under SAFE TEN and the possible need to inform the officer's supervisor as per APD policy #1-04-7.

D. The MRO will inform the Substance Abuse Program Manager that a police officer has been prescribed medication covered under the SAFE TEN testing program. The Substance Abuse Program Manager designee will contact the immediate supervisor regarding APD policy #1-04-7.

E. If appropriate, the supervisor may ask for an in-service physical in order to determine fitness for duty. Any one of the Employee Health Center's licensed physicians may conduct this physical. If necessary, the police officer may be assigned alternative duty.

3. Verification of positive results will be based on the following cut off levels:

#### **Substance Abuse Forensic Evaluation**

**(SAFE/Non-DHHS)**

<b><u>Drug</u></b>	<b><u>Screening Cut-offs</u></b>	<b><u>GC/MS Confirmation Cut-offs</u></b>
Amphetamines	≤ 1000 ng/mL	500 ng/mL
Barbiturates	≤ 200 ng/mL	200 ng/mL
Benzodiazepines	≤ 200 ng/mL	200 ng/mL
Cannabinoids (Marijuana)	≤ 50 ng/mL	15 ng/mL
Cocaine	≤ 300 ng/mL	150 ng/mL
Methadone	≤ 300 ng/mL	qualitative tests*
Methaqualone	≤ 300 ng/mL	qualitative tests*
Opiates	≤ 300 ng/mL	300 ng/mL
Phencyclidine	≤ 25 ng/mL	25 ng/mL
Propoxyphene	≤ 300 ng/mL	qualitative tests*

\*Presence only detected

#### **Negative Tests**

1. When a SAFE TEN test is negative, the Substance Abuse Program Manager will initial the results acknowledging receipt and forward the result to the Chief of Police or designee.

### **PART 1 ATTACHMENT B SYSTEM CONTACTS**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

City Substance Abuse Program Manager:

Name: Lori Cruz  
 Title: Manager of the Substance Abuse Program  
 Address: 1 Civic Plaza NW, 9<sup>th</sup> Floor Albuquerque, NM 87103  
 Telephone Number: (505) 768-3080

#### Medical Review Officer

Name: Dr. William Christenson  
 Title: Medical Review Officer  
 Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103  
 Telephone Number: (505) 768-4630

#### Substance Abuse Professional

Name: Adam Stern  
 Title: Substance Abuse Professional  
 Address: The Solutions Group  
 1240 Pennsylvania NE, Suite C  
 Albuquerque, NM 87110  
 Telephone Number: (505) 254-3555

#### DHHS Certified Laboratory: Primary Specimen

Name: SED Medical Laboratories  
 Certifying Scientist: Director of Toxicology: Martin Brady  
 Address: 5601 Office Blvd, N.E. Albuquerque, NM 87109-5816  
 Telephone Number: (505) 727-6300

#### DHHS Certified Laboratory: Split Specimen

Name: Northwest Toxicology  
 Address: 1141 East 3900 South Salt Lake City, UT 84124  
 Telephone Number: (801) 268-2431

## **PART 2**

### **COMMERCIAL DRIVER'S LICENSE POLICY**

#### **A. PURPOSE**

The City of Albuquerque has adopted this policy to ensure that City services requiring the use of a Commercial Driver's License (CDL) are delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. Additionally, the City of Albuquerque declares that the unlawful manufacturing, distributing, dispensing, possessing, or using of controlled substances or misuse of alcohol is prohibited for safety-sensitive employees.

The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. Specifically, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation has published 49 CFR Part 382, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

Any provisions set forth in this policy that are included under the sole authority of the City and are not provided under the authority of the above named Federal regulations are underlined. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

## **B. APPLICABILITY**

Part 2 of the City's Substance Abuse Policy Manual applies to all City employees (full, part-time, or volunteers) who are required to hold a Commercial Driver's License (CDL), and who perform safety-sensitive functions as defined by the FMCSA. CDL holders who work for the City Transit Department are covered under Part 3 of the policy that covers safety-sensitive employees that fall under the authority of the Federal Transit Administration. Other City employees that do not have CDLs are covered under Part 1 of the City's Substance Abuse Policy Manual.

A safety-sensitive function is any duty related to the safe operation of a commercial vehicle including the following activities:

- (1) All driving time,
- (2) All times a CDL holder is waiting to be dispatched, unless the driver has been relieved from duty by the employer. This includes being on-call or available to work at a moment's notice,
- (3) Inspecting, servicing, or conditioning a commercial vehicle at any time,
- (4) All time being in or upon any commercial vehicle except time spent in a sleeping berth,
- (5) Loading or unloading, including supervising or assisting in loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, giving or receiving receipts for a shipment being loaded or unloaded,
- (6) Repairing, obtaining assistance, or attending a disabled vehicle.

## **C. DEFINITIONS**

*Accident* means an occurrence associated with the operation of a commercial vehicle, or other heavy equipment or machinery such as backhoes, loaders, or graders, if as a result--

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- (3) One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Adulterated Specimen* is a verified specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

*Alcohol Concentration* is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

*Breath Alcohol Technician (BAT)* is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

*Canceled Test* is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which

this part otherwise requires to be cancelled. A canceled test is neither positive nor negative.

*Collection/Testing Site* means a place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and/or for the purpose of providing breath for an alcohol test.

*Commercial Motor Vehicle* is any self-propelled or towed vehicle used when the vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds, or the vehicle is designated to transport more than 15 passengers including the driver, or the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding.

*Covered Employee* means a City employee who is required to hold a commercial driver's license and performs safety-sensitive job functions on any City commercial motor vehicle.

*Designated Employer Representative (DER)* is an employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communication for the employer, consistent with the requirements of 49 CFR Parts 40 and 382, as amended.

*Department of Transportation (DOT)* encompasses all DOT agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

*Dilute Specimen* is a specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Disabling Damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT)* is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

*HHS* is the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

*Invalid drug test* means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.

*Negative Dilute* means a drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative Drug Test Result* for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended.

*Negative Alcohol Test Result* for an alcohol test means an alcohol concentration of less than 0.02 BAC.

*Non-negative test result* is a test result found to be adulterated, substituted, invalid, or positive for drug/drug

metabolites.

*Positive drug test result* for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended.

*Positive alcohol test result* for an alcohol test means a confirmed alcohol concentration of 0.02 BAC or greater.

*Positive test result* means a positive drug test result and/or a positive alcohol test result.

*Prohibited drug* means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Refusal to test.* A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by Part 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take a second test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the “shy bladder” or “shy lung” procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process) or verbal or written refusal to provide a breath/urine specimen;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

*Safety-sensitive functions on a commercial motor vehicle* include (a) driving; (b) time spent waiting to be dispatched; (c) inspecting, servicing, or conditioning equipment; (d) being in or on a commercial vehicle (except in a sleeper berth); (e) loading or unloading, including supervising or assistance in loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, giving or receiving receipts for a shipment being loaded or unloaded; (f) repairing, obtaining assistance, or attending a disabled vehicle.

*Substance Abuse Professional (SAP)* means a licensed physician (medical doctor or doctor of osteopathy) or licensed



or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders and who is qualified to act as a SAP under 49 CFR Part 40.

*Substituted Specimen* means a verified specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Validity testing* is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

*Verified negative test* means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40, as amended

*Verified positive test* means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40, as amended.

#### **D. EDUCATION AND TRAINING**

Every covered employee will receive a copy of the City of Albuquerque Commercial Driver's License Substance Abuse Policy and will have access to the corresponding federal regulations including 49 CFR Parts 40 and 382, as amended. In addition, all covered employees will receive educational materials explaining the DOT's requirements and the City's policies and procedures to meet those requirements. In addition to this policy, the City will provide covered employees with information concerning: (a) the effects of drugs and alcohol on an individual's health, work, and personal life; (b) the signs and symptoms of a drug or alcohol problem; and (c) the available methods of intervention when a problem does exist. Each covered employee is required to certify that he/she has been given a copy of this policy and other drug and alcohol information by the City. Applicants for employment are also required to execute the certification as a condition of employment. Existing covered employees who refuse to execute this required certification will be subject to discipline.

All supervisory personnel who are in a position to determine driver fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Under the City's own authority, supervisory personnel will also be trained on how to intervene constructively, and how to effectively integrate an employee back into his/her work group following intervention and /or treatment.

#### **E. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following.

(1) **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. Federal Motor Carrier Safety Administration (FMCSA) drug testing regulations (49 CFR Part 382, as amended) require that all CDL holders be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty performing a safety-sensitive job function.

(2) **Legal Drugs:** The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. Except for medication containing alcohol, nothing in this Policy prohibits a driver's use of a medication legally prescribed by a licensed physician: (a) who is familiar with the driver's medical history and specific safety-sensitive duties, and (b) who has advised the driver that the prescribed medication will not adversely affect the driver's

ability to operate a motor vehicle. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel. In addition, the employee must obtain a written release from the personal physician releasing the person to perform their duties any time they obtain a performance-altering prescription.

**A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.**

(3) Alcohol: The use of beverages containing alcohol or substances (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing a safety-sensitive job function. An alcohol test can be performed on a covered employee under 49 CFR Part 382 just before, during, or just after the performance of a safety-sensitive job function. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

#### **F. PROHIBITED CONDUCT**

(1) All covered employees are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended. An exception is allowed when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to drive. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and may be subject to disciplinary action.

(2) The City shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using or has used alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.

(3) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(4) Covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(5) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

(6) Covered employees are prohibited from possessing any amount of alcohol while on duty requiring the performance of a safety-sensitive job function, unless the alcohol is manifested and is being transported as part of a shipment.

(7) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(8) Consistent with the Drug-free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business.

#### **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

## H. TESTING REQUIREMENTS

Analytical urine drug testing and breath testing for alcohol will be conducted as required by Federal regulations. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy. All covered employees who have tested positive for drugs or alcohol on a random, or reasonable suspicion will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return to duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the following up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and be subject to discipline as defined in Section Q of this policy. A test refusal constitutes a positive test result and a direct act of insubordination. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and discipline as defined in Section Q of this policy. Additionally, refer to Section C. Definitions. Refusal to Test for all circumstances that constitute a refusal to test. When a covered employee refuses to take a non-DOT test or to sign a non-DOT form, that is not refusal to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test. However, the City of Albuquerque has a zero-tolerance policy for refusing a non-DOT or a DOT test.

## I. DRUG TESTING PROCEDURES

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40 as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a non-negative, substituted, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Substance Abuse Program Manager and the Department Program Coordinator. If a legitimate explanation is found, the MRO will report the test result as negative, to the City, and no further action will be taken. If a test is invalid without a medical explanation, a retest will be conducted under direct observation. If a test is negative dilute, a retest will not be conducted, the result of the original test will stand as the result of record.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy

may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen; if the split specimen is not able to be analyzed; or if the results of the split specimen are not scientifically adequate; the MRO will declare the original test to be canceled and will direct the employer to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will be retained for one year.

#### Observed Collections:

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

- (1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; or
- (2) The MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
- (3) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or
- (4) The temperature on the original specimen was out of range.

In addition, the employer may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

## J. ALCOHOL TESTING PROCEDURES

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of 0.02 or greater will be considered a positive alcohol test and in violation of this policy. The BAT will notify the Substance Abuse Program Manager.

The City affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If

at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

The alcohol testing form (ATF) required by 49 CFR Part 40, as amended, shall be used for all FMCSA required testing. Failure of an employee to sign Step 2 of the ATF will be considered a refusal to test.

#### **K. PRE-EMPLOYMENT TESTING**

All applicants for city positions that require the performance of safety-sensitive functions requiring CDLs shall undergo urine drug testing prior to hire or transfer into a position requiring a CDL.

(1) All offers of employment for positions requiring CDLs shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a CDL position unless the applicant takes a drug test with a verified negative result.

(2) A non-CDL employee shall not be placed, transferred or promoted into a CDL position until the employee takes a drug test with a verified negative result.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of one (1) year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and the approval of the city and a negative pre-employment drug test will be required prior to further consideration for employment. This includes providing the City proof of having successfully completed a referral, evaluation and treatment plan as described in Section 382.605. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

(5) If a pre-employment/pre-transfer test is canceled, the City will require the applicant to take and pass another pre-employment drug test.

(6) All applicants or employees being placed, transferred, or promoted from a non-covered position to a covered position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the driver worked for the previous two years.

(7) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions.

#### **L. REASONABLE SUSPICION TESTING**

All covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion drug test can be performed any time a covered employee is on duty. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under City authority, an alcohol test can be performed any time a covered employee is on duty. If the alcohol reasonable suspicion test is not administered within 8 hours of the incident, the driver shall be placed out of service for 24 hours.

The City shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee

who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on leave with pay status pending disciplinary action.

When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee has current drug and/or alcohol use or is a substance abuser, the health care provider shall notify the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the employee's department director or his/her designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, an Employee Assistance Program (EAP) counselor, or a provider of medical services under contract to the City, the employee shall be referred to the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the employee's department director or his/her designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation within 24 hours of the observation or prior to the release of the test results, which ever is earliest. This written record shall be submitted to the Substance Abuse Program Manager and the MRO and shall be attached to the forms reporting the test results.

An employee who submits a breath and/or urine sample for a reasonable suspicion drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **M. POST-ACCIDENT TESTING**

All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a City vehicle requiring a CDL, or other heavy equipment or machinery such as backhoes, loaders, or graders that results in a fatality. In addition, a post-accident test will be conducted whether or not the driver receives a citation for a moving violation if the accident results in either (a) injuries requiring immediate transportation to a medical treatment facility; or (b) one or more vehicles incurs disabling damage.

(1) As soon as practicable following an accident as defined in this policy, the employee's supervisor investigating the accident will notify the driver of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

(2) The supervisor shall ensure that an employee required to be tested under this section is tested as soon as practicable and within eight (8) hours of the accident for alcohol and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

(3) Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test.

(4) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location, if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(5) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(6) In the rare event the City is unable to perform an FMCSA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the City may use drug and alcohol post-accident test results administered by State and/or local law enforcement officials in lieu of the FMCSA test. The State and/or local

law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(7) An employee who submits a breath and/or urine sample for a post-accident drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **N. RANDOM TESTING**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of covered employees.

(1) The dates for administering unannounced testing of randomly-selected employees shall be spread reasonably throughout the calendar year.

(2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate established by the City for drugs equals fifty percent of the number of covered employees in the pool and the random testing rate established by the City for alcohol equals fifty percent of the number of covered employees in the pool.

(3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

(4) Safety-sensitive employees covered by the Federal Motor Carrier Safety Administration regulations will be included in one random pool maintained separately from other testing pools within the City.

(5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under City authority, an alcohol test can be performed any time a covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

(6) Employees are required to proceed immediately to the collection site upon notification of their random selection.

(7) An employee who submits a breath and/or urine sample for a random drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **O. RETURN-TO-DUTY TESTING**

All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the provisions of this section apply. All covered employees who previously tested positive on a drug or alcohol test or refused a test must test negative for drugs, alcohol (below 0.02 for alcohol) or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return to Duty drug test is required and an alcohol test is allowed.

Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. Before scheduling the return to duty test, the SAP must assess the employee and determine if the required treatment has been properly followed and the SAP has a reasonable level of assurance that the individual will stay drug and alcohol free. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety.

An employee who submits a breath and/or urine sample for a return-to-duty drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when an employee is off duty.

## **P. FOLLOW-UP TESTING**

All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the provisions of this section apply. Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the reasonable suspicion, post-accident, random, and return-to-duty testing program. An employee who submits a breath and/or urine sample for a follow-up drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

## **Q. RESULT OF DRUG/ALCOHOL TEST**

Any covered employee that refuses a test or has a positive drug test result, or a positive alcohol test result will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test or a refusal to test will also result in disciplinary action as specified herein.

(1) All testing results shall be reported by the City's HHS certified laboratory to the Medical Review Officer or his/her designee. If the test results are negative, the Medical Review Officer or designee will notify the appropriate parties to that effect.

(2) If the City's HHS certified laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the impacted employee with the opportunity to discuss the test result. If the Medical Review Officer finds a valid medical explanation (i.e., prescription, medical treatment) for the non-negative test result, the MRO will verify and report this test to the Substance Abuse Program Manager and the Department Program Coordinator as negative and no action will be taken. If the Medical Review Officer's assessment finds no valid medical explanation for the non-negative result, he/she will verify the test as positive or refusal to test and copies of the testing records shall be provided to the Substance Abuse Program Manager and the Department Program Coordinator.

(3) As soon as practicable after receiving notice of a positive drug and/or alcohol test result, or a test refusal, the employee's Department Program Coordinator shall ensure that the employee ceases performing any safety-sensitive function.

(4) The employee shall be immediately referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.

(5) Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination.

(6) The first instance of a positive test result or a refusal to test from a breath and/or urine sample submitted as the result of a reasonable suspicion, post accident, random, return-to-duty, or follow-up drug and/or alcohol test shall result in termination from City employment.

(7) A Voluntary Referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(8) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

## **R. GRIEVANCE AND APPEAL**



(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance. The consequences specified by 49 CFR Part 382, as amended, for a positive test or test refusal are not subject to a grievance.

#### **S. PROPER APPLICATION OF THE POLICY**

The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

#### **T. INFORMATION DISCLOSURE**

(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager or designee and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

(3) Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the employee's department director or designee.

(4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

(5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding. The information will only be released with binding stipulation that the decision maker will make it available only to parties in the proceeding.

(6) Records will be released to the National Transportation Safety Board during an accident investigation.

(7) Records will be released to the DOT or any DOT State or local agency with regulatory authority over the employer or any of its employees.

This Policy was adopted by the City of Albuquerque Chief Administrative Officer pursuant to City Council Bill R-237 on

---

Bruce J. Perlman, Ph.D.

Chief Administrative Officer

## **PART 2**

### **Attachment A**

### **SYSTEM CONTACTS**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

City Substance Abuse Program Manager:

Name: Lori Cruz  
Title: Manager of the Substance Abuse Program  
Address: 1 Civic Plaza NW, 9<sup>th</sup> Floor Albuquerque, NM 87103  
Telephone Number: (505) 768-3080

Medical Review Officer

Name: Dr. William Christenson  
Title: Medical Review Officer  
Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103  
Telephone Number: (505) 768-4630

Substance Abuse Professional

Name: Adam Stern  
Title: Substance Abuse Professional  
Address: The Solutions Group  
1240 Pennsylvania NE, Suite C  
Albuquerque, NM 87110  
Telephone Number: (505) 254-3555

HHS Certified Laboratory: Primary Specimen

Name: SED Medical Laboratories  
Certifying Scientist: Director of Toxicology: Martin Brady  
Address: 5601 Office Blvd, N.E. Albuquerque, NM 87109-5816  
Telephone Number: (505) 727-6300

HHS Certified Laboratory: Split Specimen

Name: Northwest Toxicology  
Address: 1141 East 3900 South  
Salt Lake City, UT 84124  
Telephone Number: (801) 268-2431

**PART 3**  
**TRANSIT DEPARTMENT POLICY**

**A. PURPOSE**

The Transit Department provides public transit and paratransit services for the community. Part of mission of the Department is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, the Transit Department of the City of Albuquerque declares that the unlawful manufacturing, distributing, dispensing, possessing, or using of controlled substances or misuse of alcohol is prohibited for safety-sensitive employees.

The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibit performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. Any provisions set forth in this policy that are included under the sole authority of the City and are not provided under the authority of the above named Federal regulations are underlined. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

## **B. APPLICABILITY**

Part 3 of the City's Substance Abuse Policy Manual applies to all safety-sensitive Transit Department employees (full- or part-time) when performing any transit-related business (covered employees). Transit Department employees that do not perform safety-sensitive functions are covered under Part 1 of the City's Substance Abuse Policy Manual. A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch, maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee who is required to hold a Commercial Driver's License. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A.

## **C. DEFINITIONS**

*Accident* means an occurrence associated with the operation of a Transit Department revenue service vehicle used in revenue service or which requires a Commercial Driver's License to operate, if as a result--

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- (3) One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Adulterated Specimen* is a verified specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

*Alcohol Concentration* is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

*Breath Alcohol Technician (BAT)* is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

*Canceled Test* is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A canceled test is neither positive nor negative.

*Collection/Testing Site* means a place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and/or for the purpose of providing breath for an alcohol test.

*Covered Employee* means a Transit Department employee, including an applicant or transferee, who performs a safety-sensitive function or who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

*Designated Employer Representative (DER)* is an employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communication for the employer, consistent with the requirements of 49 CFR Parts 40 and 655, as amended.

*Department of Transportation (DOT)* encompasses all DOT agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

*Dilute specimen* is a specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT)* is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

*HHS* is the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

*Invalid drug test* means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

*Medical Review Officer (MRO)* means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanation for certain drug test results.

*Negative Dilute* means a drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative Drug Test Result* for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended.

*Negative Alcohol Test Result* for an alcohol test means an alcohol concentration of less than 0.02 BAC.

*Non-negative test result* is a test result found to be adulterated, substituted, invalid, or positive for drug/drug

metabolites.

*Performing (a safety-sensitive function)* means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive drug test* result for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended.

*Positive alcohol test* result for an alcohol test means a confirmed alcohol concentration of 0.02 BAC or greater.

*Positive test result* means a positive drug test and/or a positive alcohol test.

*Prohibited drug* means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Refusal to test.* A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by Part 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;
- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take a second test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the “shy bladder” or “shy lung” procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, or verbal or written refusal to provide a breath/urine specimen;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug and/or alcohol test; and,
- Engaging in conduct that clearly obstructs the testing process.

*Revenue Service Vehicles* include all transit vehicles that are used for passenger transportation service or that require a CDL to operate, and include all ancillary vehicles used in support of the transit system.

*Safety-sensitive functions* include (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by a Transit Department employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL); (c) controlling dispatch or movement of a transit revenue service vehicle; (d) maintaining a revenue service vehicle or equipment used in revenue service; and (e) carrying a firearm for security purposes.

*Substance Abuse Professional (SAP)* means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders and who is qualified to act as a SAP under 49 CFR Part 40

*Substituted specimen* means a verified specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Validity testing* is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

*Verified negative test* means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40, as amended.

*Verified positive test* means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40, as amended.

#### **D. EDUCATION AND TRAINING**

Every covered employee will receive a copy of Part 3 of the City's Substance Abuse Policy Manual and will have access to the corresponding federal regulations including 49 CFR Parts 40 and 655, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

All Transit Department supervisory personnel who are in a position to determine employee fitness for duty will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Under the City's own authority, supervisory personnel will also be trained on how to intervene constructively, and how to effectively integrate an employee back into his/her work group following intervention and/or treatment.

Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy.

#### **E. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following.

(1) **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655, as amended) require that all covered

employees be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and covered employees may be tested for these drugs anytime that they are on duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Transit supervisor in accordance with the Personnel Rules and Regulations. The employee is required to provide a written release from his/her doctor indicating that the employee can perform his/her job functions while under the influence of the prescribed drugs. The misuse and/or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.

(3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655, as amended, just before, during, or just after the performance of safety-sensitive job functions. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

#### **F. PROHIBITED CONDUCT**

(1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR PART 40, as amended.

(2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and may be subject to disciplinary action.

(3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

(4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

(5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

(7) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(8) Consistent with the Drug-free Workplace Act of 1988, all City employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including Transit Department premises, transit vehicles, while in uniform or while on City business.

#### **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the Transit Department of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

#### **H. TESTING REQUIREMENTS**

Analytical urine drug testing and breath testing for alcohol will be conducted as required by Federal regulations. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and

random as defined in Section K, L, M, and N of this policy. All covered employees who have tested positive for drugs or alcohol on a random or reasonable suspicion test will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function. Under City authority, an alcohol test can be performed any time a covered employee is on duty.

All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the Transit Department. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and be subject to discipline as defined in Section Q of this policy. Any covered employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and disciplined as defined in Section Q of this policy. Additionally, refer to Section C. Definitions. Refusal to Test for all circumstances that constitute a refusal to test. When a covered employee refuses to take a non-DOT test or to sign a non-DOT form, that is not refusal to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test. However, the City of Albuquerque has a zero-tolerance policy for refusing a non-DOT or a DOT test.

## **I. DRUG TESTING PROCEDURES**

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are at or above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the HHS certified laboratory will be reported to a Medical Review Officer (MRO). A MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a non-negative test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Substance Abuse Program Manager and the Transit Department Program Coordinator. If a legitimate explanation is found, the MRO will report the test result as negative to the Substance Abuse Program Manager and the Transit Department Program Coordinator, and no further action will be taken. If a test is invalid without a medical explanation, a retest will be conducted under direct observation. If a test is negative dilute, a retest will not be conducted, the result of the original test will stand as the result of record.

Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by



the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the employer to retest the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will be retained for one year.

#### Observed Collections:

Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

- (1) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the employer that there was not an adequate medical explanation for the result; or
- (2) The MRO reports to the employer that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or
- (3) The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen; or
- (4) The temperature on the original specimen was out of range.

In addition, the employer may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

#### **J. ALCOHOL TESTING PROCEDURES**

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

An employee who has a confirmed alcohol concentration of 0.02 or greater will be considered to have a positive alcohol test result in violation of this policy and the BAT will notify the Substance Abuse Program Manager and the Transit Department Program Coordinator.

The Transit Department affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a

cancelled test.

The alcohol testing form (ATF) required by 49 CFR Part 40, as amended, shall be used for all FTA required testing. Failure of an employee to sign Step 2 of the ATF will be considered a refusal to test.

#### **K. PRE-EMPLOYMENT TESTING**

All applicants for covered transit positions shall undergo urine drug testing prior to hire or transfer into a covered position that requires the performance of a safety-sensitive function.

(1) All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test with a verified negative result.

(2) A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with a verified negative result.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of one year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. This includes providing the City proof of having successfully completed a referral, evaluation and treatment plan as described in Section 655.62. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

(5) If a pre-employment/pre-transfer test is canceled, the Transit Department will require the applicant to take and pass another pre-employment drug test.

(6) In instances where a covered employee is on extended leave for a period of 90 days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions.

(7) All applicants or employees being placed, transferred, or promoted from a non-covered position to a covered position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the applicant worked for the previous two years.

#### **L. REASONABLE SUSPICION TESTING**

All Transit Department covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one supervisor who is trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under the City's authority, a reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

The Transit Department shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on leave with pay status pending disciplinary action.

When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee has current drug or alcohol use or is a substance abuser, the health care provider shall notify the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the Transit Department director or the designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, an Employee Assistance Program (EAP) counselor, or a provider of medical services under contract to the City, the employee shall be referred to the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the Transit Department's Program Coordinator or the designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations. A test in this circumstance would be performed under the direct authority of the City.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the MRO and shall be attached to the forms reporting the test results.

An employee who submits a breath and/or urine sample for a reasonable suspicion drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **M. POST-ACCIDENT TESTING**

All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit revenue service vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage; unless the employee's performance can be completely discounted as a contributing factor to the accident.

(1) As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

(2) The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, and within eight (8) hours of the accident for alcohol, and within 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

(3) Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

(4) An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(5) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(6) In the rare event the Transit Department is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the Department may use drug and alcohol post-accident

test results administered by State and/or local law enforcement officials in lieu of the FTA test. The State and/or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(7) An employee who submits a breath and/or urine sample for a post-accident drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **N. RANDOM TESTING**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

(2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by the City equals fifty percent of the number of covered employees in the pool and the random testing rate for alcohol established by the City equals fifty percent of the number of covered employees in the pool.

(3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

(4) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from other testing pools within the City.

(5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under the City's authority, a random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.

(6) Employees are required to proceed immediately to the collection site upon notification of their random selection.

(7) An employee who submits a breath and/or urine sample for a random drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **O. RETURN-TO-DUTY TESTING**

All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event a covered employee returns to duty, the provisions of this section apply. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety. An employee who submits a breath and/or urine sample for a return-to-duty test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when an employee is off duty

#### **P. FOLLOW-UP TESTING**

All covered employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be

terminated. In the event a covered employee returns to duty, the provisions of this section apply. Covered employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to random, post-accident, reasonable suspicion, and return-to-duty testing. An employee who submits a breath and/or urine sample for a follow-up drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

#### **Q. RESULT OF DRUG/ALCOHOL TEST**

Any covered employee that has a positive drug test result, positive alcohol test result, or refuses to test will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test or a refusal to test will also result in disciplinary action as specified herein.

(1) All testing results shall be reported by the City's HHS certified laboratory to the Medical Review Officer or his/her designee. If the test results are negative, the Medical Review Officer or designee will notify the Substance Abuse Program Manager and the Transit Department's Program Coordinator.

(2) If the City's HHS certified laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the employee with the opportunity to discuss the test results. If the MRO finds a valid medical explanation (i.e. prescription, medical treatment) for the non-negative test result, the MRO will verify and report the test as negative and no action will be taken. If the MRO's assessment finds no valid medical explanation for the non-negative result, he/she will verify the test as positive or refusal to test, and copies of the testing records shall be provided to the Substance Abuse Program Manager and the Transit Department Program Coordinator.

(3) As soon as practicable after receiving notice of a positive drug and/or alcohol test result, or a test refusal, the Department Program Coordinator shall ensure that the employee ceases performing any safety-sensitive function.

(4) The employee shall be immediately referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider.

(5) Refusal to test shall be considered a positive test result and a direct act of insubordination and shall result in termination.

(6) The first instance of a positive test result or a refusal to test from a breath and/or urine sample submitted as the result of a reasonable suspicion, post accident, random, return-to-duty, or follow-up drug and/or alcohol test shall result in termination from City employment.

(7) A Voluntary Referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(8) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

#### **R. GRIEVANCE AND APPEAL**

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance. The consequences

specified by 49 CFR Part 655, as amended, for a positive test or test refusal are not subject to a grievance.

## **S. PROPER APPLICATION OF THE POLICY**

The Transit Department is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

## **T. INFORMATION DISCLOSURE**

(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager or designee and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to follow-up testing plans.

(3) Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the City's Substance Abuse Program Manager, Transit Department Program Coordinator, Department Director, and Department Supervisor on a need to know basis.

(4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

(5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding. The information will only be released with binding stipulation from the decision maker will make it available only to parties in the preceding.

(6) Records will be released to the National Transportation Safety Board during an accident investigation.

(7) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

(8) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City or the employee.

(9) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken.

(10) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the City of Albuquerque Chief Administrative Office pursuant to City Council Bill No. R-237, on \_\_\_\_\_.

---

Bruce J. Perlman, Ph.D.

Chief Administrative Officer

## **PART 3**

### **Attachment A**

## Transit Department Safety Sensitive Job Classifications

<u>Title</u>	<u>Job Code</u>
ASSISTANT TRANSIT MANAGER/MAINTENANCE	7V07AD
ASSISTANT TRANSIT MANAGER/OPERATIONS	7N44AD
BUILDING MAINTENANCE WORKER	2V10AD
COMMUNICATION CENTER SPECIALIST	CF00AD
ELECTRONICS TECHNICIAN	3J00AD
GENERAL SERVICE WORKER	1V06AD
LEAD MECHANIC	3V08AD
MECHANICS HELPER	1V08AD
MECHANIC 2	2V13AD
MECHANIC 3	3V07AD
MOTOR COACH OPERATOR	T746AD
PAINT & BODY HELPER	2V17AD
PAINT & BODY WORKER	3V09AD
SIGNS & MARKINGS WORKER 2	2700AD
SUN VAN CHAUFFEUR	T740AD
TIRE REPAIRER	2V16AD
TRANSIT MANAGER/OPERATIONS	8702AD
TRANSIT MANAGER/MAINTENANCE	8V08AD
TRANSIT MANAGER/PARATRANSIT OPERATIONS	8701AD
TRANSIT SUPERVISOR	4701AD
TRANSIT SUPERVISOR/MAINTENANCE	4703AD
VEHICLE MAINTENANCE SUPERVISOR	4V18AD
VEHICLE SERVICER	1V09AD
VEHICLE SERVICING SUPERVISOR	4V22AD

List to be verified by Human Resources

**PART 3****Attachment B****Alcohol Fact Sheet**

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

### **Signs and Symptoms of Use**

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

### **Health Effects**

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed an alcoholic)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

### **Social Issues**

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.



- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

### **The Annual Toll**

- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

### **Workplace Issues**

- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgement can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

## **PART 3**

### **Attachment C**

#### **SYSTEM CONTACTS**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

Transit Department Program Coordinator:

Name: Diane Kimberle  
 Title: Transit Department Program Coordinator  
 Address: 100 First St. SW, Albuquerque, NM 87102  
 Telephone Number: (505) 724-3100

City Substance Abuse Program Manager:

Name: Lori Cruz  
 Title: Manager of the Substance Abuse Program  
 Address: 1 Civic Plaza NW, 9<sup>th</sup> Floor Albuquerque, NM 87103  
 Telephone Number: (505) 768-3080

**Medical Review Officer**

Name: Dr. William Christenson

Title: Medical Review Officer

Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103

Telephone Number: (505) 768-4630

**Substance Abuse Professional**

Name: Adam Stern, M.A., LPCC, CEAP

Title: Substance Abuse Professional

Address: The Solutions Group

1240 Pennsylvania NE Albuquerque, NM 87110

Telephone Number: (505) 254-3555

HHS Certified Laboratory: Primary Specimen

Name: SED Medical Laboratories

Certifying Scientist: Director of Toxicology: Martin Brady

Address: 5601 Office Blvd. N.E. Albuquerque, NM 87109-5816

Telephone Number: (505) 727-6300

HHS Certified Laboratory: Split Specimen

Name: Northwest Toxicology

Address: 1141 East 3900 South

Salt Lake City, UT 84124

Telephone Number: (801) 268-2431

## **PART 4 EMPLOYEE ASSISTANCE PROGRAM**

### **A. PURPOSE**

As part of its efforts to promote employee wellness, the City maintains an Employee Assistance Program. The City Council has instructed the Chief Administrative Officer to “create a confidential program allowing and encouraging employees to seek help for substance abuse related problems through the Employee Assistance Program/Substance Abuse Program.” The purpose of Part 4 of the Substance Abuse Policy is to implement that instruction in a manner which provides for a safer environment for all employees and the public.

### **B. VOLUNTARY ASSISTANCE (SELF REFERRAL)**

(1) The City encourages employees who believe or suspect they may be abusing a substance to voluntarily refer themselves to the Employee Assistance Program/Substance Abuse Program for assistance. The staff is prepared to

confidentially assist employees requesting their services. Employees may self refer at any time except within twenty-four (24) hours after an accident as defined in this policy or after being notified that they must submit to a random, reasonable suspicion, transfer or promotion drug/alcohol test under Parts 1, 2 or 3 of this Substance Abuse Policy Manual. Except as otherwise provided in this policy, employee contacts and services provided to employees shall be kept confidential.

(2) Employees who voluntarily seek assistance for substance abuse may receive, without charge, brief counseling, and/or a treatment assessment with the goal of developing a City recommended treatment program. All of the City's group health insurance plans provide limited benefits to help defray the cost of treatment. Employees should either refer to their schedule of benefits or consult with SAP staff to determine the exact benefits available.

(3) Employees who self refer shall be placed on the appropriate leave status until they are, in the opinion of the City Substance Abuse Professional (SAP), ready and able to return to their assigned job duties without endangering the safety of themselves or others.

(4) All employees who self refer must consent to and submit to a baseline alcohol and/or drug test within 24 hours of self referral and shall be compliant with the City recommended treatment program no later than 90 calendar days after self referral. Compliance with the City recommended treatment program shall mean that the employee has submitted to a return-to-duty drug/alcohol test; the result of that test is negative; the employee is cooperating with his/her City recommended treatment program; the employee has provided the City with a written return-to-work agreement; and, the SAP has determined that the employee can return to work.

(5) The return-to-work agreement shall require that the employee remain compliant with his/her treatment program and state that non-compliance is grounds for discipline. In addition, the return-to-work agreement shall include an agreement to submit to periodic and unannounced follow-up testing as determined and required by the SAP.

(6) During treatment the employee's leave status shall be as follows. First, accrued leave shall be exhausted and, if insufficient, the employee shall be placed on leave without pay in accordance with the Personnel Rules and Regulations. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

(7) Employees who are not compliant with the City recommended treatment program within 90 calendar days from the date of self referral shall be terminated.

(8) Employees who refuse to submit to a periodic, unannounced follow-up test administered pursuant to a return to work agreement shall be terminated. Refusal to test as defined in Parts 1, 2 and 3 of this policy shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

(9) The first time an employee has a positive test result during the follow-up testing period, he/she will be removed from duty for a minimum of thirty (30) calendar days and placed in appropriate leave status. Employees may only again return to work upon the order of the SAP. Any employee not returned to work by the SAP within 90 calendar days shall be terminated.

(10) The second time an employee has a positive test result during the follow-up testing period, the employee shall be terminated.

(11) Follow-up testing is separate and in addition to any other testing required by other provisions of this policy and appropriate discipline shall be imposed for positive tests under those provisions without regard to an employee's participation in the self referral program.

### **C. GRIEVANCE AND APPEAL**

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance.

(3) Any employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that

analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

#### **D. RECORDS RELEASE**

(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) Records of positive tests or refusal to test in the follow-up period shall be released to the employee's department director or designee and the Substance Abuse Program Manager.

(3) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.

(4) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans.

This Policy was adopted by the City of Albuquerque Chief Administrative Officer pursuant to City Council Bill R-237 on \_\_\_\_\_.

---

Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

**February 3, 1994**

## **ADMINISTRATIVE INSTRUCTION NO. 7-1-1A**

### **SUBJECT: Signature Authority (Personnel Matters)**

This Administrative Instruction replaces certain portions of the former Administrative Instruction I dated March 29, 1986, and supplements the provisions of Administrative Instruction 1-1-1 issued this date. This Administrative Instruction is promulgated pursuant to Executive Instruction No. 2, dated December 18, 1985, which provides that signature authority for the City of Albuquerque is delegated by the Mayor to the Chief Administrative Officer, unless such signature authority is specifically reserved to the Mayor by statute, ordinance, resolution or regulation, and also provides that the Chief Administrative Officer may delegate signature authority by directive.

This Administrative Instruction describes the signature authority for specified documents related to the City's administration of personnel matters. For items not covered in this Administrative Instruction reference should be made to the City's Merit System Ordinance and the City of Albuquerque Personnel Rules and Regulations, effective December 1, 1990, as currently enacted or hereafter amended.

Unless a different rule is specified in this Administrative Instruction or in another directive of the Chief Administrative Officer, signature authority delegated herein may be further delegated in writing as follows:

1. For a short period (thirty (30) days or less), to another City employee of equal rank or an immediate subordinate by the individual to whom authority is delegated in this Administrative Instruction; or

2. For a longer or indefinite period, to any City employee approved by the Chief Administrative Officer.

If Department names or officials' titles are changed after the effective date of this Administrative Instruction, the authority delegated herein shall fall to the successors to such officials. If it is not clear to whom the authority falls, the Chief Administrative Officer shall specify the official who has the signature authority.

Unless otherwise specifically delegated to another City official by statute, ordinance, resolution, regulation, directive or instruction, final signature authority for the City is delegated to the following officials listed below in the areas and circumstances indicated:

A. Creation, re-classification or release of positions

1. Newly-created positions, non-funded positions, re-classification of positions and non-routine situations -- Personnel Director, DFM Director (or Budget Officer) and CAO
2. Release of funded positions -- CAO

B. Hiring

1. Of all classified employees who are non-management employees and management series employees below level MP5, if above step 00 and below step 04 -- Personnel Director
2. Of classified management employees at level MP5 or higher, regardless of step, and below level MP5, if above step 03 -- CAO
3. Of unclassified employees -- CAO
4. Department Directors -- CAO
5. (For the hiring of the CAO, any Deputy or Assistant CAO, the City Attorney, and the Independent Counsel approval by Council is required.)

C. Miscellaneous Actions

1. Payroll Time Sheets -- Department Director
2. Drivers permits (issuance and cancellation) -- Risk Manager

D. Leaves

1. Without pay for two weeks or less -- Department Director
2. Without pay for more than two weeks -- CAO
3. With pay for vacation, sick and injury time accrued -- Department Director
4. With pay, except as otherwise provided herein or delegated by another directive -- CAO
5. With or without pay for Department Directors for any length of time -- CAO

E. Termination of Employment -- CAO

F. Signature authority as assigned in this Administrative Instruction may be delegated in writing by the official with the assigned authority to any supervisory employee under his or her direction.

This Administrative Instruction supersedes any and all prior Administrative Instructions or directives relating to the signature authority described herein, including, but not limited to Administrative Instruction No. 1, dated March 29, 1986.

This Administrative Instruction shall become effective for all applicable documents prepared on or after the approval date indicated below.

Lawrence Rael  
Chief Administrative Officer

Date: 2/3/94

**February 6, 1996**

## **ADMINISTRATIVE INSTRUCTION NO. 7-2 (Revised)**

### **SUBJECT: Injury Time; Health Care Provider Selection; Person Designated for Receipt of Notice of Change of Initial Health Care Provider**

Risk Management is responsible for administering the City's workers' compensation program and for controlling injury time, and therefore has established pertinent rules and regulations. This instruction further clarifies those procedures:

- ® Employees are to report all on-the-job injuries to their supervisor as soon as possible after the occurrence. The supervisor shall report all serious injuries and fatalities to Risk Management by telephone as soon as possible but no later than the following workday.
- ® Department heads are to ensure that a "City of Albuquerque Supervisor's Injury Investigation Report - Workers Compensation" is completed immediately after the injury and submitted to Risk Management within two workdays.
- ® For any injury time charged on the time sheets, a leave of absence form (P-30) approved by Risk Management must be submitted to the City Payroll Office with the time sheets. Payroll will not release an employee's injury time check unless a P-30 covering the injury time has been received by them.
- ® When a City employee is injured in the course of and arising out of his/her employment, the City shall provide the worker with reasonable and necessary health care services. The City shall initially select the health care provider for the injured worker. The City will not permit the injured worker to make the initial health care provider selection.
- ® Pursuant to statute, should a worker intend to change from the initial health care provider, the worker shall provide a written notice to the City of Albuquerque of his or her intent to change health care provider. Such notice shall be submitted directly to Risk Management where the notice shall be signed and dated, and a copy retained.
- ® The City provides health care services by/through the City Employee Health Center, and after an injury, City workers shall abide by the following instructions.

1. If requiring treatment between 7:00 a.m. and 5:00 p.m., Mondays through Fridays, except holidays:

- a. Report to the City Employee Health Center, Room B06 (basement) City Hall 400 Marquette, NW; or
- b. If EMERGENCY MEDICAL TREATMENT is required, report to the nearest Presbyterian Hospital Emergency Department. For all serious emergencies, DIAL 911 and request aid/assistance. Only injuries requiring immediate medical treatment such as profuse bleeding, broken bones, unconsciousness, shock, etc., shall warrant EMERGENCY MEDICAL TREATMENT.

2. If injured at other times:

- a. Report to the nearest Presbyterian Hospital Emergency Department.

3. If treated at a Presbyterian Hospital Emergency Department, report to the City Employee Health Center the following workday.

Departments are to ensure that complete records and files are maintained, including Supervisor's Injury Investigation reports, leave of absence forms and other pertinent information which will be subject to periodic review and audit.

Lawrence Rael  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-4**

#### **SUBJECT: Rehabilitation Loans for City Employees**

All applications from City employees for rehabilitation loans must be examined by the Housing Advisory and Appeals Committee. The Housing Advisory and Appeals Committee will be responsible for insuring that all City guidelines and Federal regulations are followed before a rehabilitation loan is made to a City employee.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **July 30, 1996**

### **ADMINISTRATIVE INSTRUCTION NO. 7-5 (Revised)**

#### **SUBJECT: Pre-Employment Medical Examinations**

Effective November 19, 1990, all job applicants for City employment shall be required to submit to and pass employment medical examinations.

The medical examination shall be conducted only after an offer of employment has been made to the job applicant. An alcohol and illegal drug test shall be conducted in conjunction with the medical examination for **SAFETY SENSITIVE** positions as identified by the Director of Human Resources Department. The medical examination and the alcohol and illegal drug test shall be completed prior to the commencement of employment duties. The offer of employment shall be conditioned on the job applicant successfully passing both the medical examination and the alcohol and illegal drug test when required.

The medical examinations shall be conducted by/through the City Employee Health Center. The medical examinations shall be requested through the Human Resources Department Director or his/her designee. The results of the medical examinations shall be presented in written form to the Human Resources Department Director or his/her designee.

A job applicant who passes all other prerequisites for employment but does not pass the medical examination will be notified by the Human Resources Department of the reason(s) for failing the medical examination and advised of his or her right to challenge the medical examination results and to present evidence, including the findings of his or her own qualified medical provider, pursuant to Administrative Instruction No. 7-1.

The City shall test for alcohol and illegal drugs in conjunction with medical examinations. However, such tests are not medical examinations, and their results are not subject to the appeals process contained in Administrative Instruction No. 7-1.

The City prohibits the use of alcohol and illegal drugs at the workplace by all employees, and the City requires that employees not be under the influence of alcohol or illegal drugs in the workplace. The City requires that all employees be in compliance with the requirements of the Drug-Free Workplace Act of 1988.

The application process shall be terminated for a job applicant who tests positive for alcohol (four one hundredths of the one percent or more) or an illegal drug.

Lawrence Rael  
Chief Administrative Officer

Date: \_\_\_\_\_

## September 1, 1992

### ADMINISTRATIVE INSTRUCTION NO. 7-6

#### SUBJECT: Leave of Absence Form (P-30)

The Leave of Absence Form (P-30) was revised in November, 1986, to provide an effective means of determining what type of leave is being taken. An analysis of leave taken will ultimately provide the City with a better understanding of how this leave is being used and will assist the administration in accomplishing its goals in this area.

#### Policy

All leave shall be coded correctly on the revised Leave of Absence Form (P-30) in order to properly identify the type of leave being taken. The new forms are available in Office Services.

#### Procedures

The following procedures will be observed in coding the revised Leave of Absence Form:

1. Approval for leave of any type must be obtained from the department director or a designated representative. Spaces are provided for signatures) of the Personnel Director/Chief Administrative Officer when appropriate.

2. Types of Leave

Vacation Leave must be requested in advance.

Sick Leave (Personal Absence) is to be used for illness and/or routine medical appointments.

Sick Leave (Hospitalization) is to be used for any illness or injury requiring an extended hospital stay. It is also applicable for any surgical procedure which may involve out patient services at a hospital. If an employee is suffering from a serious illness or from a disability requiring a long-term sick leave absence (including childbirth), he/she may charge this to Sick Leave (Hospitalization) if the following conditions are met: the employee must make a written request with supporting documentation to his/her department director, and

Emergency Leave is to be used if the leave is associated with a death and/or an emergency within the immediate family.

Injury Leave may only be coded if the injury time has been approved by Risk Management. The Leave of Absence Form must be accompanied by all appropriate Risk Management forms if injury time is being claimed.

Other types of leave that may be coded are: Birthday Leave, Leave for City Business, Military Leave, Court Service/Jury Duty, Leave Without Pay. Hardship Leave requires the approval of the Chief Administrative Officer pursuant to the Personnel Rules and Regulations. Authorization for Leave to Vote may require the completion of a P-30.

3. Employee Certification of Leave Request

This section states that the employee certifies to the reason for the absence and acknowledges that a false claim could result in disciplinary action being taken.

4. Attending Physician's Certification of Leave Request

This section of the form is to be completed after a leave of more than three (3) days when Sick Leave is claimed or if an injury claim is being made. The employee will be asked to obtain his/her physician's statement and signature.

5. Risk Management Certification of Return to Work Permit

This part of the form will be completed by Risk Management.



**Action**

This instruction became effective February 9, 1987. Department directors and supervisory staff are responsible for insuring that the procedures for accurately recording leave are followed and that records and supporting documentation are properly maintained. Recording of sick-leave usage on electronic timesheets became effective with the pay period beginning February 16, 1987. Department timekeepers are to record sick leave (personal absence, hospitalization and emergency) on electronic timesheets in accordance with instructions which will be issued by DFM payroll staff.

As of the effective date of February 9, 1987, all departments are to use only the Leave of Absence (P-30) form (revised 11-86) for recording sick leave. Existing supplies of the old forms may be used for recording non-sick leave usage (vacation, etc.).

Any questions about the form or its completion should be directed to supervisors or the designated timekeeper within each department.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-7**

#### **SUBJECT: City Payroll Deduction Policy -- Non-City Sponsored Activities**

It shall be City policy to make payroll deductions only for official City- sponsored activities. The City shall not make deductions for non-City sponsored organization.

Payroll deductions for existing non-City-sponsored life insurance which currently are the only payroll deductions for non-City sponsored activities, will be continued as convenience for City employees.

Every July 1, the service charges to the insurance companies will be reviewed and revised if necessary. The service charges will be billed each July 1 and will be due in 30 days. Failure of companies to pay the service charge may result in the elimination of payroll deductions for that firm. The service charges are as follows:

<u>No. of Employees</u>	<u>Annual Fee</u>
30 to 99	\$480.00
100 to 200	600.00
Over 200	720.00

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-8**

#### **SUBJECT: City Employees Holding Elective Office**

##### **Background**

At the municipal election on October 3, 1989, the voters of Albuquerque set forth their position regarding City employees holding elective office of the State of New Mexico or its political subdivisions ("elective office").

The voters approved the provision that City employees, who were presently employed by the City and were holding elective office at the time, were to be allowed to continue to hold elective office--so long as they are elected to the same

elective office. The voters authorized City employees to hold elective office even if they were first elected and held office after October 3, 1989, but before January 1, 1993, and they were permitted to remain in office and City employment until January 1, 1993. Lastly, the voters disapproved of any City employees, other than those who held elective office on or before October 3, 1989, holding such office after January 1, 1993. Thus, it is apparent that a City policy must be established for dealing with these three classes of employees.

## **Policy**

It is the policy of the City of Albuquerque that an employee of the City, who was employed by the City of Albuquerque on October 3, 1989, and who at that time held elective office of the State of New Mexico or any of its political subdivisions, may continue to hold that same elective office while serving as a City employee. Employees elected after that date may hold elective office as provided by this instruction.

In carrying out this policy, the director of the department employing such employee ("director") shall adopt a written program with that employee which will allow the employee to attend to the functions of his or her elective office by using a combination of leave time, leave without pay, or time worked in addition to his or her regular work-week time during each one-year period. For the purposes of this policy, a fiscal year shall be the time period for calculating the time off and time counted to make it up.

At the beginning of each fiscal year, the employee and the director shall adopt a written work/leave schedule and to develop a system which would enable the employee/elected official and the employee's supervisor to know what arrangements and schedule had been established. Records shall be kept to authenticate the time worked in addition to a regular work-week. At the end of the fiscal year, there shall be a final totaling of time absent from work which the City employee accrued while holding elective office. This shall be repaid by leave time, leave without pay, or time worked in addition to a regular work week.

If, at the conclusion of the fiscal year, the time absent from work spent holding the elective office exceeds the leave time, unpaid leave, or work in addition to a regular 40-hour work-week, then the first and succeeding pay periods in the next fiscal year shall reflect a charge-off of one day per pay period against that employee's pay by withholding pay equal to one day per pay period of pay until the remaining time off from the preceding fiscal year is repaid by the payroll withholding. As an alternative, it may be charged against any accumulated leave time at the rate of eight hours to one day of leave time. A written policy for each elected employee to account for time worked in addition to the regular work-week should be formulated by the employee's supervisor and the director.

The above procedure shall also apply to employees of the City who are elected to an elective office after October 3, 1989, but who were not holding elective office on October 3, 1989, and it shall also apply to employees of the City who were holding elective office on October 3, 1989, but who chose to run for a different elective office than that held on October 3, 1989.

Effective January 1, 1993, all employees of the City of Albuquerque are prohibited from holding elective office, except those employees of the City who on October 3, 1989, were employees of the City and who also hold the same elective office which they held on that date. Those employees shall be allowed to continue holding the same elective office to which they were elected prior to October 3, 1989, and to continue as City employees.

All other employees shall not hold elective office after January 1, 1992, while employed by the City of Albuquerque. If they choose to continue in elective office after January 1, 1993, such employees must terminate their employment with the City of Albuquerque.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-9**

#### **SUBJECT: Commercial Driver's License Requirements**

The Federal Highway Administration, U.S. Department of Transportation, issued regulations establishing uniform criteria

and classifications for obtaining commercial class motor vehicle operating licenses. The State of New Mexico has adopted these criteria and operator license classifications. The criteria require all persons operating a vehicle with a Gross Vehicle Weight Rating in excess of 26,000 pounds; or a vehicle designed to transport 16 or more passengers; or a vehicle transporting hazardous materials to possess a valid Commercial Driver's License (CDL). Consequently, all City employees required to obtain and possess a Commercial Driver's License must conform to these requirements.

Although Federal and State regulations require City drivers to obtain a CDL, the regulations exempt City driver employees from the provisions requiring a medical examination prior to obtaining and/or renewing their driver licenses. Additionally, both Federal and State regulations contain guidelines for Substance Abuse Testing, although testing is optional.

#### **CITY POLICY:**

It is the Policy of the City of Albuquerque that no employee of the City shall, in his/her employment with the City, operate any vehicle or equipment which, under the laws of the State of New Mexico, requires a Commercial Driver's License, unless the employee meets all of the following criteria:

1. The driver employee shall submit to and pass a medical examination by the City's physician;
2. The driver employee shall submit to and pass a substance abuse test to ensure the absence of alcohol and/or any other prohibited substance. Such testing shall be performed by a City-designated collection site and laboratory;
3. The driver employee has, on his/her person, a valid and appropriate Commercial Driver's License issued by the State of New Mexico; and
4. The driver employee has, on his/her person, a valid City Vehicle/Equipment Operator's permit indicating the City's authorization to operate the vehicle. All City Operator's Permits currently issued to driver employees shall be revoked upon the expiration date of the individual employee's State drivers license, or April 1, 1992, whichever occurs first. Thereafter, the driver employee shall remain in compliance with this Policy.

Driver employees required to possess a CDL to operate City vehicles/equipment shall be issued a City Operator's Permit only after meeting the above requirements.

#### **DISCIPLINARY ACTION**

Failure to comply or cooperate with this Policy is cause for disciplinary action up to, and including, termination from City employment.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992 ADMINISTRATIVE INSTRUCTION NO. 7-10**

### **SUBJECT: Americans with Disabilities Act (ADA) Grievance Procedure**

#### **Background:**

Title II of the ADA prohibits discrimination on the basis of disability by public entities in all services, programs and activities (including employment) provided or made available to the public.

1. **Disability** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities (caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working) of such individual; a record of such an impairment; or being regarded as having such an impairment.
2. **Physical or mental impairment** includes, but is not limited to, such contagious and noncontagious diseases and

conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, and, if in recovery, drug addiction and alcoholism.

The U.S. Department of Justice, 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rule, §35.107(b), Complaint procedure, July 26, 1992, provides that;

"A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part."

### **ADA GRIEVANCE PROCEDURE:**

#### **A. POLICY**

The City of Albuquerque, in maintaining a policy of Equal Employment Opportunity and equal access, will afford to all employees, applicants for employment and users of public services, programs and activities, the right to file a complaint or grievance on any discriminatory action, procedure or practice in selection, employment and access. The Personnel Services Department's ADA Investigative Unit, located on the 7th Floor of City Hall, shall be responsible for investigation of all such complaints and grievances. The purpose of the procedure is to provide an avenue for the resolution of complaints formally/informally, equitably and in a timely manner.

The procedure shall be utilized only for complaints based on discrimination or alleging noncompliance with the ADA. The grievance procedure outlined in the City' Merit System Ordinance shall be used for grievable issues not alleging discrimination based on disabilities covered under the ADA.

Investigation of complaints regarding accessibility to City government programs, services and activities, reasonable accommodation or discrimination in employment, may be initiated by filing a charge with the ADA Investigative Unit of the Personnel Services Department.

#### **B. PRE-INTAKE PROCEDURE**

When investigating claims of discrimination in employment practices other than hiring, prior to accepting and investigating a complaint of discrimination, the grievant will be encouraged by the department's Affirmative Action Coordinator to discuss the complaint with his or her supervisor or department head to attempt to resolve the issues at the department level. If the grievant does not receive a satisfactory resolution of the complaint at that level, he or she may file a charge and initiate an investigation into the matter by contacting the ADA Investigative Unit.

#### **C. INTAKE PROCEDURE**

The following procedure will be used by the Personnel Department's ADA Investigative Unit in investigating and attempting to resolve ADA complaints:

1. The grievant must notify the Personnel Department's ADA Investigative Unit of his or her complaint in person or in writing within 30 calendar days from the date the alleged discriminatory action took place. The complaint shall include:
  - a. name and phone number of grievant, and department of grievant, if internal;
  - b. date, description and/or location of alleged discriminatory act;
  - c. name(s), if known, of person(s) responsible for alleged discriminatory act; and
  - d. nature of remedial action sought.
2. The Personnel Department's ADA Investigative Unit will meet with the grievant to review and clarify the issues and explain the complaint procedure, including the availability of alternative dispute resolution procedures.
3. The complaint will result in a thorough investigation conducted by the Personnel ADA Investigative Unit. The

ADA Investigative Unit will submit investigative findings and recommendations to the department director and/or Chief Administrative Officer for review and final decision within ten (10) working days of the completion of the investigation. The ADA Investigative Unit may recommend such interim relief as may be appropriate.

4. Nothing in this section shall preclude any individual from filing a formal charge with the appropriate local, state or federal civil rights enforcement agency at any stage of the procedure.

#### **D. NONRETALIATION**

No individual, applicant for employment or user of public services, programs or activities will be discriminated against, harassed, intimidated, retaliated against or suffer reprisal as a result of filing a complaint or participating in the investigation of a complaint by providing information, testimony or assisting in the investigation in any way.

#### **E. EFFECTIVE DATE**

This Administrative Instruction is effective immediately.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-11**

**SUBJECT: Americans with Disabilities Act 1990 (ADA)**

#### **Background:**

The ADA prohibits discrimination against persons with disabilities in employment, public accommodations, transportation, state and local government services and telecommunications. The Act guarantees protection comparable to that previously afforded other groups on the basis of race, sex, national origin, age and religion.

#### **Policy:**

The Administrative Instruction affirms the dedication of the city of Albuquerque to honor the spirit and promote the purpose of the ADA as well as to adhere to the letter of the Act.

Therefore:

#### **PART I**

The following clause shall appear on all printed material prepared for public dissemination:

The city of Albuquerque does not discriminate on the basis of race, color, national origin, ancestry, sex, religion, age or disability, in the provision of services, programs or activities.

#### **PART II**

The city of Albuquerque shall not discriminate on the basis of disability in contracting for the purchase of goods and services. It may not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of their disability. Further, in the selection of procurement contractors, the city shall not use criteria that subject qualified individuals with disabilities to discrimination on the basis of such disability.

To comply with these provisions and insure that city contractors and subcontractors also comply, the following provision shall be inserted in all contracts in which the city of Albuquerque is a party:

The contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42

U.S.C. §12101) and federal regulations promulgated thereunder (28 C.F.R. Parts 35, 36 and 37).

### PART III

The city of Albuquerque shall not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may it establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

#### **Effective Date:**

This Administrative Instruction is effective immediately.

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-12**

#### **SUBJECT: ADA Compliance for Public Service Announcements, Promotions and Brochures**

The Americans with Disabilities Act requires the City of Albuquerque to ensure that its communications with persons with disabilities are as effective as communications with others.

All public service announcements and promotions produced by or for the City of Albuquerque which are prepared for television shall be open or closed captioned.

All such announcements which are prepared for radio broadcast or to appear in print shall say that the announcement is also available in alternate formats, upon request.

All such public service announcements and promotions produced by or for the City shall contain the voice and TTY numbers of the department, program or service which is identified with the announcement. If no TTY number is set forth, it must state that TTY users may call by using New Mexico Relay by dialing 1-800- 659-8331.

All public service announcements and advertisements of City-sponsored programs, services and events previously produced must be modified as set forth above before they may be broadcast or distributed. Existing brochures shall be withdrawn and either reprinted or modified (for example, by adding the required information using stick-on labels or inked stamps).

Arthur A. Blumenfeld  
Chief Administrative Officer

## **September 1, 1992**

### **ADMINISTRATIVE INSTRUCTION NO. 7-13**

#### **SUBJECT: Family and Medical Leave Act (FMLA) Interim Personnel Rules and Regulations**

The City of Albuquerque will grant up to 12 workweeks of paid or unpaid, job- protected leave in any 12 months to eligible employees for certain family and medical reasons. This Administrative Instruction will provide policy on the application of the FMLA and supersedes any contradictory provisions of the City's Merit System Ordinance and/or Personnel Rules and Regulations.

#### **I. Definitions:**

- A. "Family" means an employee's spouse, child or parent.

B. A "serious health condition" is an illness or injury, impairment or physical or mental condition that involves:

1. any period of incapacity or treatment in connection with or consequent to inpatient care (e.g., an overnight stay) in a hospital, hospice or residential medical care facility; or
2. any period of incapacity requiring the absence from work for more than three (3) calendar days and involves continuing treatment by or under the supervision of a health care provider; or
3. continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three (3) calendar days; or
4. prenatal care.

C. "Continuing treatment by a health care provider" occurs when an employee or family member is:

1. treated for illness or injury two (2) or more times by either:
  - a. a health care provider; or
  - b. a provider of health care services (e.g., physical therapist) under the orders of, or on referral by a health care provider; or
2. treated for illness or injury at least once by a health care provider and such treatment results in a prescribed regimen of continuing treatment (e.g., a course of medication or therapy) under the supervision of the health care provider; or
3. under the continuing supervision of (but not necessarily being treated by) a health care provider for a serious long-term or chronic condition or disability that is incurable (e.g., Alzheimer's, severe stroke, or persons in the terminal stages of a disease).

D. A "health care provider" is:

1. a doctor of medicine (M.D.) or osteopathy (D.O.) who is authorized to practice medicine or surgery by the State in which the doctor practices; or
2. a podiatrist, dentist, clinical psychologist, optometrist and chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice and performing within the scope of their practice as defined under State law; or
3. a nurse practitioner and nurse-midwife authorized to practice and performing within the scope of their practice as defined under State law; or
4. a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

E. "Intermittent leave" is leave taken in separate blocks of time due to a single illness or injury which may include leave of periods from less than one (1) hour to several weeks.

1. The City may grant intermittent leave for child birth or adoption/placement.
2. The City will grant intermittent leave for family care or the employee's own medical care on the basis of medical necessity.

F. "Reduced leave schedule" is a schedule which reduces the usual number of working hours per workweek or workday.

1. The City may grant a reduced leave schedule for child birth or adoption/placement.

2. The City will grant a reduced leave schedule for family care or the employee's own medical care on the basis of medical necessity.

## II. Policy and Procedure

A. City employees are eligible if they:

1. have worked for at least 12 months as of the date the FMLA leave begins; and
2. have at least 1,250 hours of service during the 12-month period immediately preceding the commencement of FMLA leave.

B. Paid or unpaid leave shall be granted to eligible employees for the following reasons:

1. the birth of a child or to care for the child following birth;
  - a. this leave is available only during the first 12 months after the birth of the child (unless pregnancy makes the employee unable to perform essential job functions before birth, or for prenatal care);
  - b. this leave is available to either a mother or father (if both are employed by the City, they will be permitted to take only a combined total of 12 weeks paid or unpaid leave); or
2. the placement of a child for adoption or foster care;
  - a. this leave is available to the adoptive or foster mother/father (if both are employed by the City, they will be permitted to take only a combined total of 12 weeks paid or unpaid leave);
  - b. this leave is only available the first 12 months after placement or adoption (unless absence from work is required before placement or adoption); or
3. to care for an employee's spouse, child, or parent who has a serious health condition;
  - a. this leave is available when the employee is needed to care for a family member for a serious physical and/or psychological condition;
  - b. this leave may be taken on an intermittent basis or reduced leave schedule; or
4. for a serious health condition that makes the employee unable to perform any or all of the essential function of the job.

C. Eligible employees requesting FMLA leave shall:

1. notify their immediate supervisors of their intent to take FMLA leave and the reason(s) for such leave consistent with the intent of the Act as specified above.
2. use paid leave which will be deducted from their 12-workweek FMLA leave entitlement.
  - a. Injury time used will be charged against the 12-workweek entitlement.
  - b. Hardship leave, if all other paid leave has been exhausted, will be charged against the 12-workweek entitlement.
  - c. Accrued sick leave will be charged against the 12- workweek entitlement.
    - i. Sick leave used for FMLA purposes shall be exempted as per Section 401.4(A), Sick Leave Usage Policy, of the Personnel Rules and Regulations.
    - ii. Sick leave used for FMLA purposes shall not be exempt under Section 401.4(H), Sick Leave Incentive



Leave, of the Personnel Rules and Regulations.

d. Use of donated vacation/sick leave will be charged against the 12-workweek entitlement.

3. use unpaid leave for the balance and/or all of the 12-workweek FMLA leave entitlement if paid leave is insufficient to cover the period of entitlement. In the event employees do not return to their positions after the use of an unpaid portion of the 12-workweek FMLA entitlement, they will be transferred to physical layoff status and the one (1) year physical layoff provision will be reduced by the period of unpaid FMLA leave.

D. Employees may use accrued vacation as all or part of the 12-workweek FMLA entitlement.

E. The 12 month period for FMLA leave entitlement shall be calculated as the period of time commencing 12 months immediately preceding the first day of each new FMLA leave.

F. Employees are required to provide advance leave notice and medical certification. FMLA leave may be delayed or denied if requirements are not met.

1. Employees must provide 30 days advance notice when the leave is "foreseeable" (e.g., birth or placement of a child for adoption or foster care, planned medical treatment).

a. The City retains the right where employees' leave is foreseeable to temporarily transfer employees to alternative positions if they are qualified and if such positions are available.

b. Alternative positions shall have equivalent pay and benefits, but may also be part-time positions which better accommodate intermittent leave or leave on a reduced leave schedule.

2. Employees shall provide written medical certification from a health care provider to support a request for leave because of a serious health condition to care for their spouse, child or parent. Employees must submit such certification no later than 15 calendar days from the date leave was requested.

3. Employees shall provide written medical certification from a health care provider to support requests for leave because of employees' own serious health condition. A statement of the essential job functions or position descriptions of employees will be provided to the health care provider. Employees must submit such certification no later than 15 calendar days from the date leave was requested.

4. In the case of a request for leave because of the employee's own serious health condition, the City may require a second medical opinion (at City expense) or a third medical opinion (at City expense and with the concurrence of the employee as to the health care provider) which shall bind the City and the employee.

5. The City shall require a fitness for duty report, based on essential job functions, to return to work.

G. Return to Work

1. Employees shall be restored to the same position that they held when the leave started, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

a. If special qualifications are required for the position that have lapsed during the employees' leave, they shall be given a reasonable opportunity to fulfill the requirements after returning to work.

b. Employees are not immune from changes which occur during leave if the same result (e.g., layoff) would have occurred even had they not taken leave.

2. The standard for an equivalent position shall be that the duties, terms and conditions and privileges are equivalent to those of the previous position.

a. If special qualifications are required for positions that have lapsed during employees' leave, they shall be given a reasonable opportunity to fulfill the requirements after returning to work.

- b. Employees shall be restored to the same worksite from which they commenced leave or to a geographically proximate worksite, same workshift or equivalent schedule.
- c. Employees are not immune from changes which occur during leave if the same result (e.g., layoff) would have occurred had they not taken leave.
- d. Denial of restoration to employment or other benefits shall state in writing that employees would not have continued to be employed, or to have received benefits, if they had continued to work until the time restoration was requested. Denial of restoration must be approved by the Chief Administrative Officer or designee.
- e. "Key employees" (those in the top 10% of salary) shall have a limited exemption from the restoration requirements. Restoration may be denied upon a document showing that denial is necessary to prevent substantial and grievous economic injury to the City. The City shall notify employees of their status as "key employees" if there is a possibility that they will not be restored at the end of the leave period.

#### H. Maintenance of Insurance and Health Care Coverage

- 1. The City shall maintain employees' life insurance and health care coverages under their existing group plans for the duration of FMLA leave and under the conditions coverage would have been provided if employees had not taken such leave.
  - a. In the case of paid FMLA leave, premiums are to be paid in the manner customarily used.
  - b. In the case of unpaid FMLA leave, premiums are to be paid in the manner customarily used.
  - c. Employees are provided with a 30-day grace period after the agreed upon date for payment within which employees may make payment of premiums without affecting health care coverage.
    - i. If employees do not make payment within the 30- day grace period, the City shall cease to maintain health coverage on the date the grace period ends.
    - ii. If health care coverage is discontinued as a result of non-payment of premiums by employees after the grace period, upon return to work, employees' group health and other benefits shall be restored to at least the same level and terms as were provided when leave commenced.
  - d. Employees who do not return to work for at least 30 calendar days after completion of FMLA leave are considered to have failed to return to work for insurance and health care coverage purposes.
- 2. If a City-sponsored benefit plan is changed during employees' leave period, entitlement starts at the same point as if the employee were still on the job.
- 3. Requirements that the City allow employees to continue health benefits coverage (but paying the full cost) for purposes of Title X of COBRA, may occur when it becomes known that employees are not returning to work and therefore cease to be entitled to leave under FMLA.

#### I. Protection of Benefits

- 1. Benefits that accrued prior to start of FMLA leave shall be resumed upon employees' return to work at the same level as were provided when leave began, without any new qualification period, physical exam, open enrollment period, etc.
- 2. Any new or additional coverage or changes in health benefits shall be made available to employees while on FMLA leave.
- 3. Any increases in pay or changes in benefits which are not dependent upon seniority or accrual during the leave period shall be made effective upon employees' return to work.
- 4. For unpaid FMLA leave, relevant PERA regulations shall apply.

## J. Prohibitions

1. The City shall not interfere with, restrain, or deny the exercise of (or attempt to exercise) any right provided under FMLA.
2. The City shall not discharge or in any other manner discriminate against any individuals for opposing any practice made unlawful by FMLA:
  - a. filed charges, instituted (or cause to be instituted) any proceedings under or related to FMLA.
  - b. given (or be about to give) any information in connection with an inquiry or proceeding relating to a right under FMLA.
  - c. testified (or be about to testify) in any inquiry or proceeding relating to a right under FMLA.
3. Employees shall be protected against retaliation for opposing any practice which they reasonably believe to be a violation of FMLA.
4. Any violation of FMLA or its implementing regulations constitutes interfering with, restraining or denying the exercise of rights provided by FMLA.

## K. Enforcement

1. Employees may contact the Personnel Services Department for investigation and resolution of alleged violations of FMLA.
2. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
3. Eligible employees may bring civil actions against the City for violations.
4. FMLA does not affect any Federal or State **law** prohibiting discrimination or supersede any State or local **law** or collective bargaining agreement which provides greater family or medical leave rights.

## III. Effective Date:

This Administrative Instruction shall be effective August 5, 1993, and will remain in effect until further notice.

**Because both the leave entitlements and notice provisions are not effective until August 5, 1993, only leave starting on and after that date is considered FMLA leave which can be counted against employees' 12- workweek entitlement.**

Arthur A. Blumenfeld  
Chief Administrative Officer

**March 18, 1994**

## **ADMINISTRATIVE INSTRUCTION NO. 7-14-1**

### **SUBJECT: Nondiscrimination Policy**

The city of Albuquerque acknowledges its continuing commitment to protecting individual rights and privileges. In accordance with this commitment, the City prohibits discrimination in the operation of government on the basis of race, color, religion, national origin or ancestry, disability, age, gender, Vietnam Era or disabled veteran status, sexual orientation or medical condition.

Lawrence Rael  
Chief Administrative Officer

Date

**August 1, 2001**

## **ADMINISTRATIVE INSTRUCTION NO. 7-15-1**

**Subject: The Process Required to Obtain Authorization to Release, Create, Delete or Reclassify a Position.**

In order to expedite the filing of authorized and budgeted positions, the Human Resources Department (HRD), in conjunction with the Information Systems Division (ISD), has developed an Electronic Position Control Form (EB-3), which provides City departments with real-time tracking capabilities of the EB-3 in the process used to authorize the release and advertisement of a vacant position.

### **A) Procedure for the Electronic Routing of the EB-3**

The Electronic Position Control Form (EB-3) is to be used as the exclusive means for the release and advertisement of a vacant position. A manual Position Control Form (B-3) still will be required for requesting the creation, the deletion, or the reclassification of a position.

#### **1. Preparing the EB-3**

When preparing an EB-3, the initiating department is required to enter the job code and the organizational code. Once this information is entered, the EB-3 program automatically will complete all subsequent information related to the position, providing the department with accurate position information. The department will then proceed to complete the advertisement portion which can be accessed by the PF10 key. Once all required information has been entered the EB-3 is ready to route.

#### **2. Routing of EB-3 (Grades M-1511-8 and Above)**

Releases for all management positions, equivalent to Grades M-1511-8 and above will be initiated by the originating department and routed 1st to the Office of Management and Budget (OMB) (electronic route # 995), then to the Chief Administrative Officer (CAO) (electronic route # 805) and/or Deputy Chief Administrative Officers (electronic route # 801 or # 802) and finally to the HRD Director (electronic route # 002).

#### **3. Routing of EB-3 (Positions other than Grades M-1511-8 and Above)**

All positions other than Grades M-1511-8 will be initiated by the originating department and routed to OMB (electronic route # 995) and then to the HR Director (electronic route # 002).

#### **4. Special Routing: to include Hiring Freezes**

At times, the Chief Administrative Officer and/or Deputy Chief Administrative Officers may deem it necessary to review and evaluate all requests to release and advertise positions. During these times, the routing for ALL positions approved for release by the Chief Administrative Officer and/or Deputy Chief Administrative Officers will be as follows: 1st to the Chief Administrative Officer (CAO) (electronic route # 805) and/or Deputy Chief Administrative Officers (electronic route # 801, 802, or 803), then to the Office of Management and Budget (OMB) (electronic route # 995), and finally to the HRD Director (electronic route # 002).

### **B) Procedure for Manual B-3s**

A manual Position Control Form (B-3) will still be required for requesting the creation, deletion, change or reclassification of a position.

1. All B-3 forms initiated to create, delete, change, or to request temporary duplicate positions shall be routed to OMB and the CAO. B-3 forms to perform minor corrections (usually necessitated by invalid original input) shall not be subject to this provision.

2. Approval by the CAO to create or change any position shall be provisional for the purpose of establishing grade. Grade will be determined through Classification review performed by the Human Resources Department.
3. A regular reconciliation of the Position Control database shall be done twice yearly.
  - a. Reconciliation normally shall occur in July, at the beginning of the fiscal year and in November, prior to the Salary Forecast being generated, and will be done on an as needed basis.
  - b. Department Coordinators shall assist OMB and HRD in maintaining an accurate position control system.
  - c. Both OMB and HRD shall be responsible for correction of their respective systems.

This procedure shall be effective August 2, 2001.

Lawrence Rael  
Chief Administrative Officer

Date

## **September 8, 1994**

### **ADMINISTRATIVE INSTRUCTION NO. 7-16-1**

#### **SUBJECT: Administration of Merit System for Department of Council Services**

City of Albuquerque Merit System Ordinance §3-1-1 authorizes the Chief Administrative Officer to administer the merit system. Pursuant to the authority of this ordinance, the Chief Administrative Officer hereby delegates to the Director of Council Services administration of the merit system contained in §§3-1-1 through 3-1-25, City of Albuquerque Ordinances (1994) as it pertains to employees in the Department of Council Services.

Lawrence Rael  
Chief Administrative Officer

Date

## **March 15, 1995**

### **ADMINISTRATIVE INSTRUCTION NO. 7-17**

#### **SUBJECT: Light Duty/Modified Work Program**

It is the policy of the city of Albuquerque to fully utilize its employees and to maintain a productive, equitable and positive work environment. To accomplish this goal and to comply with the Workers' Compensation Act this policy encourages the return of employees injured on the job to productive work as soon as medically sound after the injury. Participation in the Program is restricted to employees whose status is classified as a permanent employee.

The Risk Management Division of the Department of Finance and Management shall administer the program, which will contain the following two components.

#### **LIGHT DUTY**

This component is intended to return an employee who has sustained an on- the-job injury to a productive level of work in preparation of return to his/her pre-injury position. The maximum duration of this participation shall be 45 calendar days unless an extension is approved by the Medical Director as being medically necessary.

The employee's Department in conjunction with the Employee Health Services Manager, Medical Director, and the Department of Human Resources shall be responsible for identifying the light duty job functions. The light-duty assignment will be temporary in nature to assist the employee and the operating department during the employee's

temporary inability to return to normal duty.

## **MODIFIED WORK**

This city-wide component is designed to provide productive work for employees who have been medically determined not to be capable of performing the essential job functions of their pre-injury position. When an employee is released for duty by the Employee Health Center, the Human Resources Department and/or Employee Relations shall identify vacant positions city-wide for which the employee is qualified and offer the employee a position for which the employee has been determined to be capable of performing the essential functions. This placement may either be to an existing vacant position or a position which has been modified.

The essential job functions of the position shall be identified by the receiving department, subject to approval by the Human Resources Department in conjunction with the Risk Management Division.

This policy is intended to create a positive atmosphere in which the skills and abilities of City employees may be fully utilized in a mutually productive manner.

Lawrence Rael  
Chief Administrative Officer

**June 1, 1995**

## **ADMINISTRATIVE INSTRUCTION NO. 7-18**

### **SUBJECT: Harassment/Sexual Harassment Policy**

The city of Albuquerque is committed to providing a work environment free from all forms of harassment. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, ancestry, age, disability, medical condition, or sexual orientation; and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; and has the purpose or effect of unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities or ability to obtain public services. Harassment based on any of the foregoing statuses is a form of discrimination which is unlawful under local, state and federal civil rights laws. This policy applies to all forms of harassment, including sexual harassment.

The city of Albuquerque, as a public employer and a provider of services, **WILL NOT TOLERATE OR CONDONE HARASSMENT IN ANY FORM** from any employee regardless of his/her employment status, nor from a provider of services who is under contract with the City. All employees, supervisors and managers are responsible for maintaining a work environment free of any form of harassment and will be held fully accountable in complying with this policy and taking appropriate measures to insure that such conduct does not occur. Applicants for employment are entitled to employment consideration without being subjected to sexual or other forms of harassment. **Any employee found to have engaged in prohibited harassment will be subject to disciplinary action, up to and including termination.**

This policy supersedes all previous policies with the city of Albuquerque addressing harassment/sexual harassment and is made in accordance with City Council Bill No. C/S R-158, regarding sexual harassment. Departments may reinforce this policy with an additional departmental policy consistent with this policy and with the signature of the Chief Administrative Officer.

### **DEFINITION OF SEXUAL HARASSMENT**

Title VII of the Civil Rights Act of 1964, in conjunction with the Equal Employment Opportunity Commission's guidelines for defining sexual harassment prohibits unwelcome sexual advances, requests for sexual favors, and verbal expression or physical conduct of a sexual nature.

Sexual harassment is defined as any unwelcome sexual advances, requests for sexually motivated physical contact, or other verbal expression or physical conduct or communication of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of

obtaining employment or public services; or

2. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or obtaining public services; or

3. That conduct or communication has the purpose or effect of unreasonably interfering with an individual's employment or obtaining public services or creating an intimidating, hostile or offensive environment in which to work or obtain services.

The following criteria will be looked at to determine if sexual harassment exists:

1. **The frequency of the conduct.** A single instance of an unwelcome sexually explicit comment or request for a date may not constitute a hostile environment, but a barrage of such comments or requests could.

2. **The severity of the conduct.** A single instance of physically threatening conduct or public humiliation of someone, based on the person's sex could create a hostile environment if it is severe enough. Grabbing an employee's breasts, even once, could well be considered severe, for example. But a single offensive utterance is less likely to be viewed by a court creating a hostile environment.

3. **Whether the conduct unreasonably interferes with work performance.** A person is not required to have a nervous breakdown to make a valid hostile environment claim. It is enough that the conduct "unreasonably interferes" with work performance.

Unwelcome verbal or physical conduct which does not rise to the level of sexual harassment, may be a violation of other City policies and is prohibited.

### Examples of Sexual Harassment

The following are examples of conduct which is considered sexual harassment. Conduct which is not on this list can also be sexual harassment if it meets the above definition.

#### A. Physical Assaults of a Sexual Nature, such as:

1. Rape, sexual battery, molestation, or attempts to commit these assaults;
2. Intentional physical conduct, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body that is sexual in nature.

#### B. Unwanted Sexual Advances, Propositions, or Other Unwanted Sexual Comments, such as:

1. Threatening adverse actions in order to have a sexual favor performed;
2. Suggesting a desire for sexual relations or physical contact;
3. Propositions of sexual nature;
4. Continued requests for dates AFTER being informed that such requests are unwelcome;
5. Use of any offensive or demeaning terms which have a sexual connotation such as:
  - a. Verbal abuses of a sexual nature;
  - b. Graphic commentaries about a person's body;
  - c. Use of sexually degrading words to describe a person;
  - d. Telling jokes or making remarks of a sexual nature to, or in the presence of, persons who find such jokes or remarks offensive.

6. Whistling or calling another in such a manner as to attract unwelcome attention to another person, i.e. "wolf whistling" "cat calls";
7. Initiating unwanted discussion of one's personal sex life.
8. Non-verbal gestures such as:
  - a. Looking or staring at a person up and down;
  - b. Winking, throwing kisses, or licking lips;
  - c. Making sexual gestures with hands or through body movements.

C. Sexual Displays or Publications Anywhere in Workplace by Employees, such as:

1. Displaying pictures, posters, calendars, graffiti, cartoons, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning or pornographic, or bringing into the work environment or possessing any such material to read, display, or view at work.
2. Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning, or pornographic.

**Examples of Other Harassment (related to race, sex, religion, national origin, ancestry, age, disability, medical condition or sexual orientation)**

1. Epithets
2. Slurs
3. Negative stereotyping
4. Threats
5. Hostile acts
6. Denigrating or hostile written or graphic material posted or circulated in the workplace
7. Tolerance by supervisors of above harassment

Retaliation for Harassment/Sexual Harassment Complaints is prohibited, such as:

1. Disciplining, changing work assignments of, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination, or retaliation; and
2. Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct, such as that described in any item above.

The above is not to be construed as an all inclusive list of prohibited acts under this Policy Harassment/Sexual Harassment is prohibited and hurts other employees, and contributes to a general atmosphere in which all employees suffer the consequences. Any of the prohibited conduct described here, has no legitimate business purposes; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such conduct.

**REPORTING HARASSMENT**

Employees and applicants for employment who believe they have been subjected to sexual or other harassment are encouraged to tell the person responsible for the behavior that his or her actions are offensive and unwelcome. Employees and applicants for employment have an obligation to report the matter promptly to a supervisor OR the



department director OR to the Employee Equity Manager within 180 days of the incident. An employee may also exercise his/her rights to pursue an action through any local (city of Albuquerque, Human Rights Office), state (Human Rights Commission of New Mexico) or federal (Equal Employment Opportunity Commission) regulatory agency responsible for enforcement of anti-discrimination laws. This policy does not extend the time limits to file any discrimination action.

ANY DEPARTMENT DIRECTOR, MANAGER OR SUPERVISOR WHO OBSERVES OR HAS KNOWLEDGE OF HARASSMENT, MUST IMMEDIATELY BRING THE MATTER TO THE ATTENTION OF THE EMPLOYEE EQUITY MANAGER. FAILURE TO DO SO MAY RESULT IN DISCIPLINARY ACTION.

The Employee Equity Office will investigate all reports of alleged harassment. To the extent possible, the City will keep the information confidential, consistent with its obligation to investigate promptly and thoroughly. If the City determines that harassment or other violations of City policy have occurred or that counseling, training, disciplinary measures or termination are appropriate, it will take appropriate measures to correct the problem.

No employee will be retaliated against in any way for reporting in good faith any allegations of harassment or assisting, testifying, or participating in an investigation. **Such retaliation in and of itself may result in disciplinary action, up to and including termination.**

All employees are required to cooperate with any investigation undertaken by the City in response to an allegation of harassment. Department Directors are responsible for assuring cooperation with investigations. **Refusal to cooperate in an investigation may result in disciplinary action, up to an including termination.**

Each department director shall adhere to and enforce the procedures established by the city of Albuquerque which provides work sites free of harassment/sexual harassment, so that instances of harassment/sexual harassment will be detected soon after their occurrences, and to provide for resolution of complaints within the department.

ALL EMPLOYEES OF THE CITY OF ALBUQUERQUE HAVE THE RIGHT TO AN EQUITABLE WORKING ENVIRONMENT.

The Employee Equity Office is available to discuss incidents, investigate whether the conduct appears to be harassment or sexual harassment, and explain the options for dealing with harassment. Any activity that may be harassment should be reported to determine if any corrective action should be taken.

For more information contact the Employee Equity Program at 764-1040.

#### **Effective Date**

This Administration Instruction is effective immediately.

Lawrence Rael  
Chief Administrative Officer

**July 16, 2001**

## **ADMINISTRATIVE INSTRUCTION NO. 7-19 (Revised)**

**SUBJECT: Political Activities of City Employees and Use of City Property for Political Activities**

Every city employee has the right to support the Candidates and ballot questions of their choice; however, the credibility and the integrity of our service demands that City employees obey the laws and regulations governing political activity and prevent the appearance of governmental involvement or bias.

### **1. Definitions**

*Candidate* or *Candidates* shall mean a person who is a prospective candidate or a person who has filed as a candidate or their representative or anyone promoting or opposing any ballot proposition or the election of anyone seeking public office in any election.

*Public Meeting Space* means a City owned or leased area inside or outside of a structure that is used as a meeting area for general public on an ongoing basis throughout the year and shall not include meeting rooms and conference rooms or other areas used only for government business.

## 2. Conduct of City Employees

The following activities are permitted or prohibited for all City employees with respect to all elections.

### A. Activities Permitted Any City employee may:

- 1) Register and vote;
- 2) Express an opinion about Candidates or on issues;
- 3) Assist in voter registration drives;
- 4) Display political pictures, stickers or posters in homes or on private vehicles;
- 5) Become politically active in connection with any question or issue on the ballot;
- 6) Attend a political rally, fund raising function or other political gathering; or
- 7) Participate in the following activities while not on duty.
  - a Sign nominating petitions;
  - b. Make voluntary contributions to Candidates or issues committees; or
  - c. Wear political buttons or badges while not on duty or in City uniform.

### B. Activities Prohibited No City Employee Shall:

- 1) Become a Candidate for any elective City office;
- 2) Actively campaign for or against a Candidate for any elective office while on duty or represent a Candidate while on duty. Volunteers assisting in City functions under the supervision or direction of City employees shall not campaign for a Candidate while performing such duties for the City;
- 3) Receive, disburse or account for assessments, contributions or other funds for any Candidate;
- 4) Receive or offer to receive any money, gratuity or benefit from any candidate;
- 5) Wear on one's person political badges or buttons while on duty or while in a City uniform at any time;
- 6) Take either a position for or against any Candidate for elective office while representing either that such position is an official City position on such Candidate or that such position is taken in one's official capacity as a City employee;
- 7) Circulate nominating petitions within or on City property while on duty, at the place of one's employment or at any time or any place while in City Uniform;
- 8) Serve as an election judge or clerk in a City election;
- 9) Use any City-owned property, equipment, supplies, vehicles or space either to campaign for or against a Candidate.
- 10) Display or distribute any political stickers, posters or materials on or from City-owned vehicles or City property;

11) Display or distribute any political stickers, posters or material for or against any Candidate while on duty or at the City employee's work place, other than bumper stickers displayed on the employee's private vehicle, including vehicles parked in City owned parking lots; or

12) Use the employee's position or status to influence the support of other City employees or City officials for or against any Candidate or issue.

C. **Hatch Act** Any City employee whose principal employment is in connection with an activity which is financed in whole or part by loans or grants made by the United States or a Federal agency is subject to the provisions of the Hatch Act in addition to the prohibited activities set forth in this memorandum. Each City Employee is responsible for determining if Hatch Act prohibitions apply to his or her employment with the City.

### **3. Facility Tours.**

City employees who are authorized to conduct tours of City facilities may guide Candidates through City facilities provided that such employees do not campaign for or against any Candidate while conducting such tour. Tours shall not disrupt or otherwise interfere with ongoing City programs, activities, or meals.

### **4. Public Meetings.**

Candidates may attend meetings of advisory councils or other similar organizations that are authorized by the City to conduct activities at a City facility as well all City boards and commissions. Candidates may be introduced to the public at the meetings of such organizations. Candidates shall be entitled to make public comment on agenda items that are open for public comment.

### **5. Petition Signatures.**

Candidates may ask members of the public at City facilities to sign nomination or other petitions to qualify to be on the ballot. Candidates shall not solicit such signatures from City employees during the employee's working hours. Solicitation of petition signatures shall not interrupt ongoing City activities, programs, or meals and shall not block the orderly flow of traffic.

### **6. Campaign Materials.**

Candidates may wear campaign logos, clothing, buttons, name tags and other similar campaign materials while at City facilities, as may members of the public, whether or not they are actively campaigning. City employees and volunteer staff under the direction of City employees shall not wear, carry or distribute such campaign materials while on duty.

### **7. Use of City Property.**

City Property may be used for political activities only through compliance with the following:

A. Candidates shall be allowed access to Public Meeting Space for campaign events through written request at least two weeks prior to the planned event. The manager of the facility the Candidate designates for use shall make the determination of availability of the requested facility. Any previously scheduled use of the location or conflicting ongoing uses for a City-sponsored activity shall take precedence over the request. Campaign events consist of the use of part or all of a facility for a meeting or program by the Candidate and do not include activities described previously in this administrative instruction. In the event more than one Candidate requests use of Public Meeting Space on City property for the same day and time, the request first received shall be allowed if the Public Meeting Space is otherwise available. No City equipment, materials, or labor of City employees on duty shall be provided to Candidates related to their use of a Public Meeting Space.

B. A Candidate may distribute campaign materials, greet employees and solicit contributions and petition signatures at entrances or exits to City property as well as at any place open to the general public but only in a manner that does not disrupt the orderly flow of traffic or interrupt City activities, programs or meals.

C. Campaign materials may be placed in a manner and at locations as designated by the manager of the City facility. The manager shall provide locations accessible to the public. The manager shall be entitled to limit space

available for each Candidate in order that all Candidates may have space for their materials and to limit the number of locations for such materials to ensure the public safety.

D. Candidates and their representatives shall not contact City employees at their work sites while the City employee is on duty other than to make arrangements for the use of City facilities as allowed in this administrative instruction.

Lawrence Rael  
Chief Administrative Officer

**February 20, 1997**

## **ADMINISTRATIVE INSTRUCTION 7-20-1 (Corrected)**

### **SUBJECT: City of Albuquerque Substance Abuse Review and Appeals Board - Rules of Procedure for Appeals From Designation of Positions as "Safety Sensitive"**

1. Statement of Purpose. The purpose of these rules is to implement and clarify the City of Albuquerque (hereinafter the "City") policies regarding the designation of certain positions as "safety sensitive" for purposes of substance abuse and alcohol and drug testing, as required by Section 2(B) of Resolution R-237 of the City Council for the City of Albuquerque, and to establish fair and expeditious procedures for employees to contest the designation of their positions as "safety sensitive" as required by said Resolution and Administrative Instruction 7-1-1 (Revision 2), Section M(4).
2. Authority. These rules are enacted pursuant to powers stated in Section 2(B) of R-237, and Section M(4) of Administrative Instruction 7-1-1 (Revision 2).
3. Legislative Definitions. For purposes of these rules, the terms defined in Section C of Administrative Instruction 7-1-1 (Revision 2) shall have the meanings set forth therein.
4. List of "Safety-Sensitive" Positions. The City Human Resources Department shall promulgate and cause to be circulated to each City Department a list of all "safety-sensitive" positions within City government.
5. Notification of Employees. The Human Resources Department shall notify each "safety-sensitive" employee of such designation. Such notification shall be in writing, and shall state that the employee's position has been designated as "safety sensitive", that the employee's Department has been notified of such designation, and shall advise each affected employee of their right to appeal such designation. Employees newly hired or transferred into a "safety-sensitive" position shall be promptly notified of such status by the Director of the Human Resources Department.
6. Employee's Appeal Notice. An employee whose position has been designated as "safety sensitive" may appeal such action by submitting a notice of appeal to the Director of the Human Resources Department within thirty (30) calendar days of his or her notification that his/her position has been designated as "safety sensitive". The notice of appeal shall state:
  - (1) The employee's name;
  - (2) Social security number;
  - (3) Job classification, or other information identifying the employee's position; and
  - (4) The reasons for the employee's claim that his or her position is not "safety sensitive", including information relating to the employee's daily job duties together with any supporting documents.

The rights of appeal set forth in these rules shall not apply or be available to employees whose positions are defined in United States Department of Transportation Regulations as "safety sensitive" nor to the designation of "safety-sensitive" positions held by police officers, corrections officers or firefighters.

7. Department Inquiry. The Director of the Human Resources Department shall review the information submitted by the employee, along with any information provided by the employee's department, and shall notify the employee in writing of a determination within fifteen (15) calendar days of the employee's submission. The Director of the Human

Resources Department shall simultaneously forward the employee's claim and the notification of determination to the Substance Abuse Policy Review and Appeals Board (hereinafter the "Board").

8. Notification of Hearings on Appeals. If the determination of the Director of the Human Resources Department is to deny the employee's claim, the Board shall set the employee's appeal for hearing as expeditiously as possible, and shall notify the employee, or his or her representative, the employee's Department Director, and the Director of the Human Resources Department of the date, time and place of the hearing. In the event the employee fails to appear at the time and place specified, the employee may reapply for a hearing within ten (10) calendar days of the hearing date by submitting another notice of appeal to the Director of the Human Resources Department, as provided in Section 6, above, and, in addition, the employee shall state the reasons for his or her failure to appear at the earlier scheduled hearing. It shall be within the Board's discretion to grant or deny the employee's renewed request for a hearing.

9. Conduct of Hearings. In all hearings conducted under this regulation, the employee shall have the right to be represented by a person of his or her choosing. The proceedings shall be recorded either by means of stenographic or audio tape by a certified reporter or monitor. Neither the rules of evidence nor of civil procedure shall apply, but the employee and the Director of the Human Resources Department shall each be accorded a full and fair opportunity to examine witnesses and to present any relevant evidence to the Board so as to establish a complete record.

10. Standard of Review. In deciding whether a position should be classified as "safety sensitive", the Board shall apply the criteria set forth in Administrative Instruction 7-1-1 (Revision 2), and shall apply the designation, at a minimum, to employees with access to Controlled Substances and to those employees who are required by their job descriptions to hold a commercial driver's license, and who actually drive commercial vehicles. In determining whether the designation should apply to additional positions, the Board shall consider the extent to which the job responsibilities impact upon the safety of the public, the extent to which the job responsibilities expose the employee or co-workers to hazardous conditions, and the extent to which the job requires responsibility for the safety of others.

11. The Board's Decision. The Board shall issue a written decision within thirty (30) calendar days of the completion of the hearing to either uphold or to reverse the determination of the Director of the Human Services Department. The Board shall state the reason for its decision, and shall transmit its decision to the Chief Administrative Officer. Copies of the Board's decision also shall be provided to the employee, or his or her representative, the employee's Department Director, and to the Director of the Human Resources Department. The Board's decision on the matter shall be the City's final administrative step, and shall not be subject to further review or appeal.

Lawrence Rael  
Chief Administrative Officer

## **September 5, 1996**

### **ADMINISTRATIVE INSTRUCTION NO. 7-21**

**SUBJECT: Change of Drug Testing Standard for the Police Department**

This instruction relates to Administrative Instruction No. 7-1-1 (Revision 2), Substance Abuse Policy. The drug test standard for the Police Department has been the NIDA 5. The new standard will be the SAFE 10 for all types of testing involving Police Officers.

This change will be effective immediately.

Lawrence Rael  
Chief Administrative Officer

## **November 25, 2002**

### **ADMINISTRATIVE INSTRUCTION NO. 7-22 (Revised)**

**SUBJECT: Violence in the Workplace and Domestic Violence Policies**

#### **A. Policy Background**

Violence in the workplace is a tragedy which occurs all too frequently and appears to be on the rise within the workforce in today's society. Homicide is now the leading cause of death for women in the workplace and the second leading cause for men. As a major and diverse employer in the community, the City of Albuquerque has a significant interest in providing a work environment to all of its employees that minimizes the risk of workplace violence.

Domestic violence is a significant concern in addressing workplace violence since this form of violence often extends to the worksite of the victim. Although statistics indicate that most incidents of domestic violence are attributed to males, no one should ignore the fact that such abuse can also be attributed to females or occur in same sex relationships.

## **B. Violence in the Workplace Policy**

It is the policy of the City of Albuquerque that workplace violence by employees shall be prohibited. Furthermore, violent behavior including domestic disputes directed toward a City employee by a member of the general public shall not be tolerated.

Prohibited workplace behavior includes intimidation; verbal threats; physical assault; vandalism; arson; sabotage; the unauthorized display, possession or use of weapons on City property (Personal Rules/Regulations 301.7), jokes or comments regarding violent acts which are reasonably perceived to be a threat; or, any other behavior reasonably perceived to be a threat of imminent harm against an employee or member of the general public.

It is the responsibility of all employees who witness or are the subject of the behaviors prohibited by this policy to report the incident(s) to their immediate supervisor unless the supervisor is the one exhibiting the prohibited behavior, in which case the employee shall report the behavior to the next highest person within the organization.

It is the responsibility of the supervisor receiving the complaint to conduct an investigation of the incident(s) in accordance with the methods and procedures presented in the mandated supervisory development training. These materials may be obtained from Employee Health Services, 768-4613. The supervisor will initiate appropriate action to abate the prohibited behavior. The supervisor shall prepare a written response within 10 days to the employee(s) reporting the incident(s). This response shall include acknowledgement of the employee(s) complaint; a description of the investigation conducted; and, the action that was initiated to abate the prohibited behavior.

After a finding of fact that an employee engaged in prohibited behavior, the supervisor will conduct a pre-determination hearing and will make a mandatory referral to the Employee Assistance Program (768-4613) and impose disciplinary action up to including termination.

## **C. Implementation Guidance**

Workplace violence is highly situational, requiring creativity and judgment to be applied to a specific situation.

Upon occasion, employees may encounter situations in which the threat of immediate harm from another employee or the general public may occur. In the vast majority of these situations, employees can de-escalate the situation. Examples of appropriate de-escalation techniques include:

1. Offering to transfer an irate caller on the telephone to a supervisor.
2. Requesting the intervention of supervisor.
3. Walking away from the situation.
4. Staying in control of speech and behavior. Do not retaliate or respond in kind.
5. Contacting security or APD to have the offender removed from the premises.

Appropriate action which could be initiated by the supervisor to abate prohibited behavior by an employee might include:

1. Referral of an employee to the City's Employee Assistance Program. This is initiated by contacting the manager of Employee Health Services, 768-4613.

2. Referral of an employee to the City's Medical Director for a Fitness for Duty examination. This is initiated by contacting the HR Administrator of the Human Resources Department, 768-3700.
3. Placing the employee on administrative leave.
4. Imposing disciplinary action up to and including termination from City employment.
5. Offering assistance and cooperation in filing a criminal complaint against the offender.

Appropriate action which could be initiated by the supervisor to abate prohibited behavior directed at a City employee by the general public might include:

1. Notifying the individual that a complaint has been filed by the employee. The specific prohibited behavior should be stated and the individual advised that this behavior violates City Policy, will not be tolerated, and may result in legal action.
2. If possible, eliminate or reduce the opportunity for future contact between the employee and the individual.
3. Assist the employee in filing a criminal complaint against the offender.

#### **D. Domestic Violence/Civil Protection Orders**

It is the intent of this policy to encourage employees to self-disclose situations relating to domestic violence. Employees shall notify their supervisors the workplace may be in danger from the perpetrator. Employees shall notify their supervisor and the Employee Health Services Manager when the City worksite has been included (or is requested to be included) in a civil protection order and to provide a copy of the civil protection order to their supervisor.

Supervisors have the responsibility to take reasonable steps to honor the civil protection order and to expedite a request for leave of absence, if necessary. Supervisors shall contact the City's Employee Assistance Program to facilitate contact between the Program and impacted employee. Supervisors shall maintain respect for individual privacy and confidentiality within the context of protecting the worksite, co-workers, general public and the individual employee involved.

This administrative instruction is effective immediately.

Jay J. Czar /s/\_\_\_\_\_  
 Jay J. Czar  
 Chief Administrative Officer

Date: 11/25/02

**April 23, 1998**

## **ADMINISTRATIVE INSTRUCTION NO. 7-23**

**SUBJECT: Employee Clearance Form**

#### **Background:**

During the course of employment, City staff is issued a variety of equipment/supplies for official use in performing the essential tasks of the position. Upon termination of an employee **OR** transfer from one department/division to another it is the supervisors responsibility to retrieve all issued equipment/supplies and notify the proper offices of the termination and/or transfer.

#### **Policy:**

#### **EMPLOYEES TERMINATING CITY EMPLOYMENT**

It is the responsibility of both the employee and the supervisor to ensure completion of the Employee Clearance Form on

the employee's last work day. The form is to serve as a means of 1) obtaining the correct mailing address for the employee; 2) documenting the reason for terminating employment; 3) serve as a check list to ensure the supervisor retrieves all equipment and/or supplies previously issued; 4) coordinate all payroll activities, i.e., final check, payroll schedules, dock pays, direct deposits; 5) allowing for termination of health/dental benefits and notification of COBRA rights; and 6) reminding the supervisor to request cancellation of computer access through submittal of a service request and/or e-mail message to the Help Desk. Additionally, all petty cash funds for which the employee had custodial responsibility should be reconciled and returned to the supervisor.

## **EMPLOYEES TRANSFERRING TO ANOTHER CITY DEPARTMENT**

It is the immediate supervisor's responsibility to ensure completion of the Employee Clearance Form upon transfer to another City department/division.

This action will ensure all equipment and/or supplies be retrieved prior to the transfer and will ensure all the required Payroll and ISD coordination takes place.

### **Effective Date:**

This administrative instruction is effective immediately

Lawrence Rael  
Chief Administrative Officer

**March 1, 1999**

## **ADMINISTRATIVE INSTRUCTION NO. 7-24**

**SUBJECT: Merit System Ordinance § 3-1-6(B), Leave for Collective Bargaining**

### **Purpose:**

The Merit System Ordinance revision of October, 1998, provides that employee members of a union's negotiating team will receive leave with pay to attend scheduled bargaining sessions with the City's negotiating team which occur during the employee's normal working hours. The purpose of this Administrative Instruction is to specify the rules of procedure concerning leave with pay for collective bargaining.

### **Applicability:**

Leave with pay for collective bargaining is only for the time necessary to attend scheduled bargaining sessions with the City's negotiating team. Such leave may be requested no earlier than 60 days prior to the expiration of an existing agreement and may not be granted after tentative agreement or a successor agreement is reached. Leave for collective bargaining is not available during the term of a collective bargaining agreement. Four bargaining unit members who are designated by a union as the unions negotiating team pursuant to § 3-2-12 of the Labor Management Relations Ordinance will receive leave with pay to attend scheduled bargaining sessions with the city negotiating team which occur during the employee's normal work shift.

### **Method of Verification and Approval:**

At the end of each scheduled bargaining session, eligible bargaining team members will prepare a City leave form detailing the normal work time spent bargaining. If the leave form is in compliance with this Instruction and § 3-1-16 of the Merit System Ordinance, the City's lead negotiator will verify the employee's attendance at the collective bargaining session. The employee will receive beginning one hour prior to the commencement of the bargaining session and ending one hour after the bargaining session has concluded. When the leave form is verified by the City's lead negotiator the leave form shall be submitted to the Chief Administrative Officer for approval.

Lawrence Rael  
Chief Administrative Officer



Date: 3/5/99

**March 12, 1999**

## **ADMINISTRATIVE INSTRUCTION NO. 7-25**

**SUBJECT: Effective Dates for Personnel Actions**

### **Background:**

One of the key components of processing a new hire, transfer or promotion is the timely approval of the required documentation for the personnel file and for payment purposes. In the past we have had problems in coordinating the timing of the paperwork with the actual physical movement of the employee. The retirement percentage paid by employees can change due to a transfer from one union group to another in addition to changing salary rates which if not processed timely will require a manual proration or retroactive pay. In order to ensure all paperwork is processed timely and accurately a sufficient amount of processing time must be incorporated in the procedure.

### **Policy:**

All new hires, promotions and transfers will be effective at the start of pay period. City managers should be cognizant of this policy when making employment or promotional offers. After the selected individual is approved for hire, transfer or promotion the Human Resources Department will be the sole entity to contact the employee and advise them of the actual effective date. This process will allow sufficient time for the Human Resources Department to arrange for required physicals and/or substance abuse testing. The Human Resources Department will be responsible for ensuring these types of personnel actions always reflect the first day of a pay period as the effective date. The City of Albuquerque has defined the typical pay period to be a two week period that starts on a Saturday and end on a Friday.

The Human Resources Department, Department Directors and Human Resources contacts must ensure the proper personnel transaction paperwork (P-one) and all required testing, physicals and/or substance abuse testing is completed *prior* to an employees first day of work.

Questions regarding this policy may be directed to the Human Resources Department.

Lawrence Rael  
Chief Administrative Officer

Date: 3/15/99

**May 17, 1999**

## **ADMINISTRATIVE INSTRUCTION NO. 7-26**

**SUBJECT: Policy for Compensation Adjustments for Retention of Mission Critical Employees**

### **Purpose:**

To establish a compensation plan to retain qualified management and professional employees in mission critical positions, by providing competitive compensation adjustments to certain employees who have received outside offers of employment.

### **Policy:**

The City will implement a system to permit competitive compensation adjustments to retain classified management and professional employees in mission critical positions, who have received a *bona fide* offer of employment from another employer outside City government. The criteria for such adjustments and the procedure to determine when such adjustments will be awarded is as follows:

1. **Criteria:** A competitive compensation adjustment must meet **all of** the following criteria:

- a. The employee must currently hold a classified position within City government as a permanent, non-probationary employee, and the City must reasonably anticipate some tangible or intangible benefit in retaining the employee.
  - b. The employee's position within City government must be one that is critical to carry out essential government functions.
  - c. The employee must possess exceptional skills, experience and/or qualifications for the position and must have demonstrated exceptional job performance as a City employee.
  - d. The employee must have received a *bona fide* offer of employment from an employer outside of City government, and must be able to demonstrate that the outside employer has offered compensation significantly greater than what the employee currently earns, for a comparable position.
  - e. A competitive compensation adjustment for an employee may be offered as a salary increase and/or as a lump sum compensation adjustment.
  - f. A position will not be reclassified in order to offer a competitive compensation adjustment unless the job duties of the position actually warrant reclassification.
  - g. A salary increase offered under this Administrative Instruction shall not exceed the range for the grade of the position.
  - h. A salary increase offered under this Administrative Instruction shall not exceed 10% of an employee's annual salary.
  - i. A lump sum compensation adjustment offered under this Administrative Instruction shall not exceed 10% of an employee's annual salary.
  - j. An employee who accepts a lump sum compensation adjustment under this Administrative Instruction shall be required to sign an agreement to repay the adjustment on a pro-rated basis if he/she resigns from City employment within one (1) year of receiving the adjustment.
  - k. The total competitive compensation adjustment offered under the Administrative Instruction shall not exceed 20%.
  - l. A compensation increase offered under the Administrative Instruction shall not exceed 1% above the amount offered to the employee by the outside employer.
2. **Procedure:** The following procedure is established to determine whether to offer an employee a competitive compensation increase:
- a. The Chief Administrative Officer shall designate a committee consisting of three (3) people to review requests for compensation increases made pursuant to this Administrative Instruction. The Committee members shall serve at the discretion of the Chief Administrative Officer. No employee of the Department making the request shall serve as a committee member.
  - b. A request for a compensation increase under this Administrative Instruction may only be made by the Department Director of the individual for whom the increase is sought. The request must be in writing, must include a copy of a written offer of employment to the employee for whom the adjustment is sought, from an outside employer, and must show justification for the increase in accordance with the criteria established by this Administrative Instruction.
  - c. The Department Director seeking the increase shall submit the request to all committee members, who shall then review the request, determine whether or not the criteria have been met, and submit a recommendation to the Chief Administrative Officer.
  - d. The Chief Administrative Officer shall have the final authority to determine whether or not to offer a compensation adjustment under this Administrative Instruction to any person.

e. Any action taken under this Administrative Instruction shall not be the subject of a grievance under the Merit System Ordinance.

**Effective Date:**

This policy will be effective from May 19, 1999, until June 30, 2000.

Lawrence Rael  
Chief Administrative Officer

Date: 3/15/99

**April 9, 2003**

**ADMINISTRATIVE INSTRUCTION NO. 7-27 (Revised)**

**SUBJECT: Retirement Process**

**Background:**

The purpose of this administrative instruction is to revise the established Policy and Guidelines regarding the retirement process to include calculating deferred compensation "catch-up" provisions, hazardous duty leave, vacation and sick leave "cash out" payments and regular wages for the last pay period. This will allow a sufficient amount of time to ensure all payments and calculations are timely and accurate.

**Policy:**

In order to ensure that retirees are transferred into Early Retirement in a timely manner and to ensure that all sick and vacation balances are accurate and Deferred Compensation lump sums payments are done accurately and in a timely manner the following process will be enforced:

**Employee Responsibilities:**

1. Employees are advised to submit a request for Total Service Credit Verification, using the PERA Request Form (attached) or a request letter, at least one year prior to their planned Early Retirement date or planned PERA retirement date. PERA addresses and telephone numbers are listed on the last page of this Instruction.
2. The Employee must contact the PERA office and schedule an appointment to complete their retirement application at least 90 days prior to retirement or, if using Early Retirement, 90 days prior to Early Retirement date.
3. Prospective retirees must submit a memorandum to their Department Director, through their immediate supervisor, advising them of their intent to retire. This memorandum should include the effective date of retirement. A copy of this memorandum will then be submitted to the Insurance and Benefits Division of HRD.
4. Immediately upon completing the retirement application, the employee must contact the Insurance and Benefits Division for an appointment to chart out their Early Retirement schedule, to finalize cash out payments and to complete basic life beneficiary forms. At this initial appointment, the employee must submit a copy of the PERA verification of Total Service Credit and a copy of the PERA retirement application.
5. Employees electing to defer a lump sum payment to their Deferred Compensation plan under the "catch-up" provision must contact their Deferred Compensation representative to complete the necessary forms. Forms must be submitted to the Insurance and Benefits Office at least three weeks prior to the actual retirement date. The employee must ensure that the amount being deferred is equal to or less than the vacation/sick leave balance the employee is entitled to receive at retirement. Once this deferral is processed adjustments cannot be made so it is important that the amounts and paperwork be correct.

**Operating Departments**

1. To forward notices of resignation to the Human Resources Department Insurance and Benefits Office within 24 hours of receipt from the employee.
2. To reconcile the retiring employees vacation and sick leave balances and forward the reconciled P-29 and employees clearance form to the Insurance and Benefits Office on the employees last workday.
3. To ensure the employee has taken their birthday leave, managerial leave and floating holidays and has used or is paid for compensatory time prior to the employee transferring into Early Retirement.
4. To ensure that the employee is coded correctly on the last payroll so that there is no delay in submitting a certification to PERA.

### **Human Resources**

1. To process all early retirements and process "cash out" payments timely and accurately and in a timely manner.
2. To ensure the Deferred Compensation "catch up" provisions are processed in accordance with the rules and regulation and to coordinate with the respective Deferred Compensation representative and City payroll as necessary.
3. To ensure the reconciled balances of all vacation and sick leave hours are "cashed out" in accordance with the designated timelines.
4. To distribute this Administrative Instruction annually to all employees with twenty-three years, of service or more, or eighteen(18) years for Police and Fire, as reflected in the payroll system.
5. To present this Administrative Instruction at all pre-retirement seminars.
6. To ensure that all medical and dental benefits for retiring employees are in effect through the end of the corresponding month.

### **Early Retirement**

1. Employees must schedule an appointment with the Insurance and Benefits Office ninety (90) days prior to entering into Early Retirement. An employee may take leave with pay equivalent to the amount of sick and vacation leave the employee has accumulated.
2. The employee must deliver a copy of the PERA Verification of Total Service Credit, a copy of the PERA retirement application, and a current P-29 form at the time of their Early Retirement appointment.
3. HR will transfer employees to Early Retirement at the beginning of a pay period in accordance with a leave chart which establishes the entry date into Early Retirement and which schedules leave usage up to the retirement date.
4. Employees in Early Retirement are not entitled to salary increases afforded other City employees and may not use donated leave or hardship leave in early retirement. Employees using sick and vacation leave in Early Retirement are not eligible to accrue sick or vacation leave while in Early Retirement.

### **Retirements During Calendar**

1. Retirees will receive a paycheck with regular wages for the last pay period corresponding with their effective date of retirement, on the next regularly scheduled pay date.
2. If the employee has a balance of vacation and/or sick leave that is to be paid out in cash, this amount will be paid on the next regular pay date after the pay date in which the employee received their final regular wages.

### **End of Year**

1. Retirees will receive their last biweekly wages on the first payday in January to include any regular hours worked through December 31.

2. For employees opting for the split "catch-up" clause for deferred compensation, the first portion of the "catch-up" will be processed on a special payroll run during the last regular payroll in December.
3. For employees opting for the split "catch up" clause for deferred compensation, the second portion of the deferral will be paid on the second payroll in January.
4. For employees not deferring, the remainder of vacation and sick leave balances will be paid **by check** to the retiree on the second payroll in January. This check will not be mailed, but must be picked up by the retiree at the City Insurance Office.

#### **Other Special Circumstances**

1. Employees covered by the Police union are permitted, by contract provision, to defer sick and vacation leave at year end if they are retiring at any time prior to the end of the following calendar year. Such employees are to declare retirement and file paperwork with the City Insurance Office in accordance with the policy outlined in this Administrative Instruction before the end of the calendar year prior to the year in which they intend to retire. Upon filing the required paperwork and being credited with the first deferral payment, retirement is not revocable.
2. Employees using deferral of sick and vacation leave to purchase prior service credit or uniformed service credit from PERA may defer leave 90 days prior to retirement date in order to allow sufficient time for the necessary fund transfers. The 90-day advance deferral will be subject to processing of retirement paperwork as outlined in the Administrative Instruction. It will also be necessary for employees to submit a letter requesting approval from the Director of Human Resources for the sell back, a copy of the Credit Service Letter from PERA, and a copy of the estimate from PERA for the purchase of the credit service time. Upon completion of the advanced deferral, retirement is not revocable.

#### **Pre-Retirement Seminars/Counseling**

City employees will receive updated information regarding the retirement process through regularly scheduled Pre-Retirement Seminars (every other month for the general employee population and quarterly for sworn officers). Schedule of meetings will be announced in the "Retirement Message" newsletter issued to employees every two months.

[Click here to view PERA Request Forms](#)

#### **Effective Date:**

This policy will become effective for all retirements occurring on or after April 21, 2003 and forward.

Jay Czar /s/                      4/9/03  
Jay Czar, Chief Administrative Officer                      Date

## **July 21, 2003 ADMINISTRATIVE INSTRUCTION NO. 7-28 (Revised)**

**SUBJECT: Employee Compensation During the Classification Study Implementation**

**This Administrative Instruction is hereby rescinded effective immediately.**

\_\_\_\_\_  
Jay J. Czar                      Date  
Chief Administrative Officer

**March 8, 2000**

## **ADMINISTRATIVE INSTRUCTION NO. 7-29**

**SUBJECT: Extension of Benefits to Domestic Partners of Employees**

## Background

The City of Albuquerque recognizes and values the diverse composition of its employees. The City acknowledges that people's lives have evolved from when laws governing family relationships were enacted. Perpetuation of the traditional definitions of "family" excludes a significant segment of the employee population, deprives them of recognition and validation, and denies certain rights that should be afforded to persons who share their homes, their hearts and their lives. The City, recognizing its commitment to nondiscrimination and fair treatment of its employees, adopts this policy acknowledging domestic partnerships.

## Policy

Beginning July 1, 2000, the City will provide health and dental insurance coverage, optional supplemental life insurance and leave usage to its employees with domestic partners who meet the criteria established by the City, to the same extent that these benefits are provided to employees with spouses.

### 1. Domestic Partners

The City defines domestic partners as two individuals who live together in a long-term relationship of indefinite duration. There must be an exclusive mutual commitment similar to that of marriage, in which the partners agree to be financially responsible for each other's welfare and share financial obligations.

### 2. Qualifying Criteria

To be recognized as domestic partners by the City, both individuals must meet all of the following criteria and sign an Affidavit of Domestic Partnership (form attached to this Administrative Instruction as Exhibit A) and submit any necessary documentation:

- a. Both domestic partners must be unmarried;
- b. Domestic partners must have been in a mutually exclusive relationship for the last twelve (12) months, intending to do so indefinitely, and must share the same primary residence;
- c. Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations;
- d. Domestic partners must meet the age requirements for marriage in the State of New Mexico and be mentally competent to consent to contract; and
- e. Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the State of New Mexico.

### 3. Affidavit of Domestic Partnership

a. Both partners must sign an Affidavit of Partnership using the form attached to this Administrative Instruction. The partners must also present three (3) of the documents listed below:

1. joint lease or mortgage
2. recent bank account/credit card statement
3. recent rent bill or receipt
4. joint checking, savings or brokerage account
5. joint automobile registration
6. joint ownership of a tangible major asset

7. designation of domestic partner as beneficiary in a will
8. designation of domestic partner as beneficiary for life insurance or pension retirement benefits
9. durable power of attorney designating the partner

b. Providing false information may result in disciplinary action, loss of benefits and/or reimbursement to the City and insurer of costs involved in providing benefit coverage.

#### 4. Termination of Domestic Partnership

a. A domestic partnership is terminated when either partner fails to satisfy the qualifying criteria, upon the death of a domestic partner or when a partner files an Affidavit of Termination (form attached to this Administrative Instruction as Exhibit B).

b. If the Affidavit of Termination is not signed by both domestic partners, the partner signing the affidavit must certify that the other domestic partner has been notified of the termination by registered mail, return receipt requested.

c. Individuals granted domestic partnership status must report any change in status that terminates the relationship within sixty (60) calendar days of the change.

#### 5. Dependents of Domestic Partners

a. The child of a domestic partnership may be claimed as a dependent if the child resides within the household of the domestic partnership, meets the age requirements for insurance benefits coverage, is primarily dependent upon the employee or domestic partner for support, and a parent-child relationship exists based upon one of the following:

1. either of the domestic partners is the biological parent of the child;
2. either or both partners are adoptive parents of the child;
3. the child is a stepchild of either partner;
4. the child has been placed in the partners' household as part of an adoptive placement, legal guardianship or by court order.

#### 6. Taxation Issues

a. The value of insurance benefits provided to the domestic partner is considered taxable income to the employee by the Internal Revenue Service and is subject to social security and federal and state income tax withholding.

b. Domestic partners are not entitled to COBRA continuation benefits because they do not meet the definition of spouse under COBRA. Any other laws pertaining to continuation of benefits that require coverage for a spouse will not apply to a domestic partner.

c. For an employee who is in a domestic partnership, the employee's portion of the insurance deduction is still eligible for PIPP.

Lawrence Rael  
Chief Administrative Officer

Date: 3/8/00

#### **Exhibit A** **AFFIDAVIT OF DOMESTIC PARTNERSHIP**

##### **I. Declaration**

We, \_\_\_\_\_  
 (Employee Name) (Social Security Number)

and \_\_\_\_\_  
 (Partner's Name) (Partner's Social Security Number)

declare that:

1. We are unmarried;
2. We share the same primary residence and have been in a mutually exclusive relationship for the last twelve (12) months and intend to do so indefinitely;
3. We meet the age requirements for marriage in the State of New Mexico and are mentally competent to consent to contract;
4. We are not be related by blood to the degree prohibited in a legal marriage in the State of New Mexico; and
5. We are jointly responsible for the common welfare of each other and share financial obligations.

## II. Change in Domestic Partnership

We agree to notify the City of Albuquerque Human Resources Department in writing within sixty (60) days of any change in our status as domestic partners (for example, if we no longer share the same principal residence) or if we wish to terminate domestic partner benefits.

## III. Dependent(s) of Domestic Partners

We declare as eligible dependent(s):

Name of Child Initials	Employee Initials	Partner
_____	_____	_____
_____	_____	_____
_____	_____	_____

## IV. Acknowledgments

1. We understand that the value of insurance benefits provided to the domestic partner is considered taxable income to the employee by the Internal Revenue Service and is subject to social security and federal and state income tax withholding.
2. We understand that courts have recognized some non-marriage relationships as the equivalent of marriage for the purpose of establishing and dividing community property.
3. We acknowledge the City's advice that we consult our private attorney before signing this document.

We affirm, under penalty of perjury, that the assertions in this Affidavit are true and correct. We understand that any misrepresentation of fact may result in loss of benefits, disciplinary action and that the employee is responsible for reimbursement to the City for any cost involved in providing benefit coverage.

\_\_\_\_\_  
 Employee's Signature Date

\_\_\_\_\_



Domestic Partner's Signature \_\_\_\_\_ Date \_\_\_\_\_

STATE OF NEW MEXICO    )  
                                  ) ss.  
COUNTY OF BERNALILLO    )

The foregoing Affidavit of Domestic Partnership was subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000  
by \_\_\_\_\_, City of Albuquerque employee.

My Commission Expires:

\_\_\_\_\_  
Notary Public

STATE OF NEW MEXICO    )  
                                  )ss.  
COUNTY OF BERNALILLO    )

The foregoing Affidavit of Domestic Partnership was subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000  
by \_\_\_\_\_, Domestic Partner.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Human Resources Director, or designee)

#### **Exhibit B**

#### **AFFIDAVIT OF TERMINATION OF DOMESTIC PARTNERSHIP**

I       (Employee's Name)       declare that I no longer have a domestic partnership with       (Partner's Name)      .

I file this Termination of Domestic Partnership to cancel the Affidavit of Domestic Partnership earlier filed by me on       (date)      . I understand that I may not file another Affidavit of Domestic Partnership until twelve (12) months have passed from this date.

I mailed my former partner a copy of this notice at       (Address)       on       (date)      .

I declare under penalty of perjury that the above statements are true and correct.

\_\_\_\_\_  
Employee's Signature                      Date

\_\_\_\_\_  
Employee's Social Security Number

Employee's Address: (if changed): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Human Resources Director, or designee)

**October 3, 2000**

**ADMINISTRATIVE INSTRUCTION NO. 7-31-1**

**SUBJECT: Change of Drug Testing Standard for Open Space Enforcement Officers and Aviation Police Officers**

This instruction relates to Administrative Instruction No. 7-1 (Revision 3), Substance Abuse Policy Manual, dated December 10, 1999. The drug test standard for Open Space Enforcement Officers and Aviation Police Officers has been the SAFE 5. The new standard will be the SAFE 10 for all types of testing involving Open Space Enforcement Officers and Aviation Police Officers.

This change will be effective immediately.

Lawrence Rael  
Chief Administrative Officer

**February 9, 2006**  
**ADMINISTRATIVE INSTRUCTION NO. 7-32-1**

**SUBJECT: EMPLOYEE WORK PLANS**

**APPLICABILITY:**

The Employee Work Plan (EWP) applies to:

- All M-17, M-18, M-19, and M-20 employees.
- Other employees whose job duties include program or project management, or having a significant influence on the development or implementation of policy or program strategies, or providing strategic resource allocation recommendations or decisions, or having discretion over service delivery.
- Unclassified, professional employees are encouraged, but not required, to develop Employee Work Plans consistent with this Administrative Instruction.

Administrative Instruction 7-32-2, Performance Evaluation Guides, applies to employees in the classified service whose duties do not meet the applicability requirements specified above.

**Background:**

The Merit System Ordinance requires the Chief Administrative Officer (CAO) establish a system to annually evaluate the work performance of City employees in the classified service. The Ordinance makes clear that performance evaluations shall not be the subject of a grievance. It also makes clear that the major focus of employee performance evaluations shall be on the communication of:

- The linkage of the employee's duties to the achievement of City goals,
- performance standards and expectations,
- work elements critical to successful performance of the employee's position and job requirements,
- opportunities for performance improvement, and
- performance improvements attempted and achieved.

In recent years, the City has shifted to performance-based budgeting in an effort to measure and continuously improve the overall performance and delivery of City services relative to customer-oriented standards and needs. This shift is reflected in the City's five-year goals and annual priority objectives and is incorporated in the City's annual budgeting process. Volume II of the City budget, the Performance Plan, reflects the City's goals and desired community/customer

conditions, the program strategies to achieve the goals, service activities that implement the strategies, and measures of input and performance.

The City of Albuquerque wishes to connect and align these systematic approaches in order to provide management with a tool to improve governmental accountability and results and to provide a focus for the organization. This will help employees understand their roles in continuously improving services for City of Albuquerque customers and meeting the important goals of the organization.

### **Policy:**

At least once each fiscal year, each City of Albuquerque employee in the classified service to whom this Administrative Instruction applies, shall confer with his or her supervisor and develop an Employee Work Plan (EWP). Thereafter, each supervisor and employee shall evaluate the performance of the employee pursuant to the prior year's EWP and the actual results achieved. The EWP shall relate to and be guided by the relevant City goal, program strategy mission and metrics, and service activity purpose and metrics in which the employee is budgeted. It shall reflect the employee's contributions to organizational results, as well as specific, anticipated achievements in improving the quality of the employee's work and work relationships. This annual process shall provide each employee with the opportunity to demonstrate improvement in performance pursuant to the plan developed by the employee and supervisor.

The development and evaluation of results of the Employee Work Plan shall form the core employee performance evaluation process for the City of Albuquerque's employees to whom this Administrative Instruction applies. Individual departments may substitute or augment this core process with an established or new performance evaluation system only with the advance approval of the CAO, based on a review and recommendation by the Director, Human Resources Department. Such substitution or augmentation must not conflict with the core process outlined in this Administrative Instruction.

While not required by ordinance, unclassified, professional employees are encouraged to participate in this process. This is consistent with the intent of linking organizational performance to employee performance and produces the same benefits of communication and alignment intended by these systems. Seasonal, student, and temporary employees are not classified employees subject to the Merit System Ordinance or this Administrative Instruction.

Compliance with this Administrative Instruction will be measured in part by ensuring that each City employee has a current EWP on file in the Human Resources Department within 30 days of the beginning of the fiscal year. Currency of the EWP requires that it has been jointly developed by the supervisor and employee, that it reflects the employee's current job duties, and that it applies to the current fiscal year. Supervisors' performance will be evaluated, in part, by their level of compliance with this Administrative Instruction and Administrative Instruction 7-32-1, Performance Evaluation Guides.

The CAO will establish a Task Force to address implementation of this Administrative Instruction, review results of the process annually, and make recommendations for continuous process improvement. The Director, Human Resources Department, will chair the Task Force, with representation, as a minimum, from the Office of Management and Budget and the Center for Learning, Education, and Development.

### **Implementation:**

For FY/06, any employee to whom this Administrative Instruction applies that does not have an EWP in place as of July 1, 2005, shall meet with their supervisor and develop an EWP no later than December 31, 2005. Employees who, with their supervisor, developed an EWP prior to July 1, 2005 shall meet with their supervisor no later than December 31, 2005 to determine if any changes or adjustments are necessary or desired. Prior to June 30, 2006, all employees to whom this Administrative Instruction applies will meet with their supervisor to review the results of their FY/06 EWP and develop an Employee Work Plan for FY/07 that aligns with the priority objectives and goals of the City, their work unit, and their personal career goals.

### **Procedures:**

1. Each supervisor and employee will jointly complete an EWP prior to the end of the fiscal year. Forms and additional guidance are included as attachments to this Administrative Instruction. Previous versions of the EWP may be used until FY/07. Completion of EWPs should cascade downward through the organization since lower level EWP or PEGs may be affected by the contents of a higher level employee's EWP.

a. Any employee newly hired, transferred or promoted into a position to which this Administrative Instruction applies shall meet with their supervisor within thirty days of hire, transfer or promotion to develop their EWP for the balance of the fiscal year. At least once during their probationary period, the new employee and supervisor shall meet to determine if the EWP developed in the first thirty days needs further adjustment or refinement or to clarify performance expectations.

b. Any employee to whom this Administrative Instruction applies that transfers or is promoted into a position that does not meet the applicability provisions of this Administrative Instruction shall meet with their supervisor prior to their transfer or promotion to review the results of the EWP in effect at the time of the transfer or promotion. Following the transfer or promotion, the provisions of Administrative Instruction 7-32-2 apply.

2. Both the supervisor and employee will sign the EWP. Signing does not necessarily indicate agreement, only that the supervisor and employee have completed the process.

3. Review, routing, and distribution of EWPs:

a. Supervisors will provide the employee with a copy of the signed EWP.

b. Route the original and one copy of each EWP, through channels, to the department director. Department directors are encouraged to review EWPs to ensure they are completed in accordance with the intent of this Administrative Instruction.

c. Department directors will route the original EWP to the Human Resources Department for filing in the employee's personnel file within 30 days of completion.

d. Department directors will file one copy of the completed EWP in the employee's department personnel file. Department directors may delegate the filing and maintenance of completed department EWP copies to individual supervisors, if desired.

4. Department directors will:

a. Establish internal procedures and schedules to ensure that supervisors of each employee, including probationary, newly hired, transferred, and promoted employees, are aware of and compliant with the intent and requirements of this Administrative Instruction.

b. Maintain an adequate supply of EWP forms and instructions at convenient locations throughout their departments.

c. If necessary, contact the Center for Learning, Education, and Development (LEAD) at 924-3877 for assistance in implementing and maintaining the provisions of this Administrative Instruction. LEAD will provide an instructor for individual or small-group training sessions on how to complete EWPs and comply with other provisions of this Administrative Instruction.

---

Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

**February 9, 2006**

## **ADMINISTRATIVE INSTRUCTION NO. 7-32-2**

**SUBJECT: PERFORMANCE EVALUATION GUIDES**

**APPLICABILITY:**

The Performance Evaluation Guide (PEG) applies to:

- All employees represented by a collective bargaining agreement, except those who are required to complete an Employee Work Plan in accordance with Administrative Instruction 7-32-1.
- Any employee, not included in a collective bargaining agreement, whose duties do not involve program or project management, or do not have a significant influence on the development or implementation of policy or program strategies, or do not provide strategic resource allocation recommendations or decisions, or do not exercise discretion over service delivery.
- Temporary, seasonal, or student employees are not classified employees covered by the Merit System Ordinance and do not require an Employee Work Plan or Performance Evaluation Guide.

Administrative Instruction 7-32-1, Employee Work Plans, applies to employees in the classified service whose duties do not meet the applicability requirements specified above.

#### **Background:**

The Merit System Ordinance requires the Chief Administrative Officer (CAO) establish a system to annually evaluate the work performance of City employees in the classified service. The Ordinance makes clear that performance evaluations shall not be the subject of a grievance. It also makes clear that the major focus of employee performance evaluations shall be on the communication of:

- The linkage of the employee's duties to the achievement of City goals,
- performance standards and expectations,
- work elements critical to successful performance of the employee's position and job requirements,
- opportunities for performance improvement, and
- performance improvements attempted and achieved.

In recent years, the City has shifted to performance-based budgeting in an effort to measure and continuously improve the overall performance and delivery of City services relative to customer-oriented standards and needs. This shift is reflected in the City's five-year goals and annual priority objectives and is incorporated in the City's annual budgeting process. Volume II of the City budget, the Performance Plan, reflects the City's goals and desired community/customer conditions, the program strategies to achieve the goals, service activities that implement the strategies, and measures of input and performance.

The City of Albuquerque wishes to connect and align these systematic approaches in order to provide management with a tool to improve governmental accountability and results and to provide a focus for the organization. This will help employees understand their roles in continuously improving services for City of Albuquerque customers and meeting the important goals of the organization.

#### **Policy:**

At least once each fiscal year, each City of Albuquerque employee in the classified service to whom this Administrative Instruction applies, shall confer with his or her supervisor and develop Performance Evaluation Guide (PEG). Thereafter, each supervisor and employee shall evaluate the performance of the employee pursuant to the prior year's PEG and the actual results achieved. The PEG shall relate to and be guided by the relevant City goal, program strategy mission and metrics, and service activity purpose and metrics in which the employee is budgeted. It shall reflect the employee's contributions to organizational results, as well as specific, anticipated achievements in improving the quality of the employee's work and work relationships. This annual process shall provide each employee with the opportunity to demonstrate improvement in performance pursuant to the guide developed by the employee and supervisor.

The development and evaluation of results of the Performance Evaluation Guide shall form the core employee performance evaluation process for the City of Albuquerque's employees to whom this Administrative Instruction applies. Individual departments may substitute or augment this core process with an established or new performance

evaluation system only with the advance approval of the CAO, based on a review and recommendation by the Director, Human Resources Department. Such substitution or augmentation must not conflict with the core process outlined in this Administrative Instruction.

While not required by ordinance, unclassified employees are encouraged to participate in this process. This is consistent with the intent of linking organizational performance to employee performance and produces the same benefits of communication and alignment intended by these systems. Seasonal, student, and temporary employees are not classified employees subject to the Merit System Ordinance or this Administrative Instruction.

Compliance with this Administrative Instruction will be measured in part by ensuring that each City employee to whom this Administrative Instruction applies has a current PEG on file in the Human Resources Department within 30 days of the beginning of the fiscal year. Currency of the PEG requires that it has been jointly developed by the supervisor and employee, that it reflects the employee's current job duties, and that it applies to the current fiscal year. Supervisors' performance will be evaluated, in part, by their level of compliance with this Administrative Instruction.

The CAO will establish a Task Force to address implementation of this Administrative Instruction, review results of the process annually, and make recommendations for continuous process improvement. The Director, Human Resources Department will chair the Task Force, with representation as a minimum, from the Office of Management and Budget and the Center for Learning, Education, and Development.

### **Implementation:**

For FY/06, any employee to whom this Administrative Instruction applies that does not have a PEG in place as of July 1, 2005, shall meet with their supervisor and develop a PEG no later than December 31, 2005. Employees who, with their supervisor, developed a PEG prior to July 1, 2005 shall meet with their supervisor no later than December 31, 2005 to determine if any changes or adjustments are necessary or desired. Prior to June 30, 2006, all employees to whom this Administrative Instruction applies will meet with their supervisor to review the results of their FY/06 PEG and develop an Performance Evaluation Guide for FY/07 that aligns with the priority objectives and goals of the City, their work unit and specific job duties, and their personal career goals.

### **Procedures:**

1. Each supervisor and employee will jointly complete a PEG prior to the end of the fiscal year. Forms and additional guidance are included as attachments to this Administrative Instruction. Completion of PEGs should cascade downward through the organization since lower level PEGs may be affected by the contents of a higher level employee's Employee Work Plan or Performance Evaluation Guide.

- a. Any employee transferred or promoted into a position to which this Administrative Instruction applies shall meet with their supervisor within thirty days of hire, transfer or promotion to develop their PEG for the balance of the fiscal year.

- b. Supervisors will meet with probationary employees within 30 days of their hire date and develop a probationary PEG. Supervisors will again meet with the probationary employee at the mid-point of the probationary period and review the employee's performance. At the end of the probationary period, supervisors will meet with the probationary employee to rate and document performance on the probationary PEG and develop a new, annual PEG for the remainder of the fiscal year.

- c. Any employee to whom this Administrative Instruction applies that transfers or is promoted into a position that does not meet the applicability provisions of this Administrative Instruction shall meet with their supervisor prior to their transfer or promotion to review the results of the PEG in effect at the time of the transfer or promotion. Following the transfer or promotion, the provisions of Administrative Instruction 7-32-1 apply.

2. Both the supervisor and employee will sign the PEG. Signing does not necessarily indicate agreement, only that the supervisor and employee have completed the process.

3. Review, routing, and distribution of PEGs:

- a. Supervisors will provide the employee with a copy of the signed PEG.

b. Each completed PEG must be reviewed by the writing supervisor's next higher level of supervision. The reviewing supervisor will then forward the PEG to the department director. Division and department directors are encouraged to review PEGs to ensure they are completed and reviewed in accordance with the intent of this Administrative Instruction.

c. Route the original and one copy of each PEG, to the department director.

d. Department directors will route the original PEG to the Human Resources Department for filing in the employee's personnel file within 30 days of completion.

e. Department directors will file one copy of the completed PEG in the employee's department personnel file. Department directors may delegate the filing and maintenance of completed department PEG copies to individual supervisors if desired.

4. Department directors will:

a. Establish internal procedures and schedules to ensure that supervisors of each employee, including probationary, newly hired, transferred, and promoted employees, are aware of and compliant with the intent and requirements of this Administrative Instruction.

b. Maintain an adequate supply of PEG forms and instructions at convenient locations throughout their departments.

c. If necessary, contact the Center for Learning, Education, and Development (LEAD) at 924-3877 for assistance in implementing and maintaining the provisions of this Administrative Instruction. LEAD will provide an instructor for individual or small-group training sessions on how to complete PEGs and comply with other provisions of this Administrative Instruction.

---

Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

**March 6, 2006**

## **ADMINISTRATIVE INSTRUCTION NO. 7-33-1 (Revised)**

**SUBJECT: Adoption of Procedures for a Voluntary Transfer Program Prior to Layoff**

### **Background:**

Layoff is defined as the involuntary separation of classified, non-probationary employees from City service as a result of the abolishment of a position, program elimination or a lack of funds. Probationary, unclassified, temporary, seasonal and student employees are not eligible for layoff privileges.

The Chief Administrative Officer and the Director of the Human Resources Department are responsible for approving all layoffs and offering transfers or placement offers to employees who are or may be identified for layoff. Prior to a layoff, the Chief Administrative Officer shall develop a layoff plan that must be based on seniority principles and applicable collective bargaining agreements.

### **Purpose:**

In an effort to reduce the impact of a potential layoff, and prior to the implementation of the layoff plan, the Chief Administrative Officer may offer voluntary transfers to employees affected by the plan to avoid placing employees in layoff status. These voluntary transfers will be offered using seniority principles.

### **Procedure:**

When the City contemplates the abolishment of positions, elimination of programs or faces a lack of funds, the City may institute voluntary transfers prior to layoff. The following procedures will be followed:

1. If applicable, department directors may administratively transfer identified employees within their departments with the guidance and approval of the Human Resources Department. Efforts will be made to transfer employees to the same job title; if that is not possible then to the same grade. Prior to transfer, the Human Resources Department must verify the employee's qualifications for the new position. The employee must sign the (attached) form indicating that the transfer is voluntary (to reduce the impact of a potential layoff) and the transfer is final. The acceptance of a voluntary transfer will constitute final action.
2. After departmental transfer possibilities have been exhausted, the Human Resources Department will identify positions Citywide (available vacant funded positions) for which the affected employees (within departments and Citywide) may qualify.
3. Only the Human Resources Department is authorized to make offers to employees within the classification within the department, and Citywide. If employees wish to voluntarily transfer (to offered positions), offers will first be made to the most senior qualified employee within the classification in the affected department. If no employee is willing to voluntarily transfer, the layoff process will be initiated.
4. Employees must sign the (attached) form indicating that the transfer is voluntary and final. If employees do not wish to voluntarily transfer, the employee must sign the (attached) form indicating that they are not interested in a voluntary transfer and prefer to remain in their current position even though it may be affected by layoff.
5. The Human Resources Department will process the voluntary transfers in coordination with the affected department. All voluntary transfers will be effective on a date determined by the Human Resources Department and at the beginning of a pay period.

---

Bruce J. Perlman, Ph.D.

Chief Administrative Officer

---

Name: ID #:  
 Title: Grade:  
 Department:

CITY OF ALBUQUERQUE

Human Resources Department

VOLUNTARY TRANSFER REQUEST

&

POSITION IDENTIFICATION FORM

I have read the memo "Opportunity for Voluntary Transfer" provided to me. I understand I have the opportunity to voluntarily transfer to another position for which I am qualified and that I cannot be transferred into a position at a higher grade. Further, I understand this transfer would be voluntary and final.

\_\_\_\_\_ I decline this opportunity to voluntarily transfer. I understand I will receive a notice of layoff pursuant to the Personnel Rules & Regulations or collective bargaining agreement as applicable.

\_\_\_\_\_ I accept this opportunity to voluntarily transfer. I am interested in the positions I have identified below:

---



Title	Job Code	Grade	Department

NOTE: Transferring to a safety sensitive position requires passing a drug test and/or background check prior to transfer.

If a position for which I am qualified is not currently available or is filled by a more senior qualified employee, I will receive a notice of layoff within the time prescribed by the Personnel Rules & Regulations or collective bargaining agreement as applicable.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

## **February 10, 2003 ADMINISTRATIVE INSTRUCTION NO. 7-34**

### **SUBJECT: Prohibition of Supervision of City Employees by Non-City Personnel**

#### **Background:**

City employees are required to abide by standards set forth in the Merit System Ordinance, the Labor Relations Management Ordinance and the Personnel Rules and Regulations, and collective bargaining agreements. Independent contractors and temporary employment agency employees are not knowledgeable of the standards contained in these documents and are not subject to the provisions therein. It is the intent of the City of Albuquerque to treat all City employees consistently and in accordance with all required laws and regulations, and hold all City employees to the same standards.

#### **Purpose:**

The purpose of this Administrative Instruction is to provide requirements for independent contractors supervising City employees and prohibit temporary employment agency employees from supervising City personnel.

There are several elements of supervision required to ensure a productive work environment including, but not limited to; attendance, payroll, work hours, work schedules, employee work planning, disciplinary action, etc. Supervision also requires ensuring collaboration with co-workers to achieve the work objectives and ensuring employees receive appropriate work assignments. Independent contractors cannot exercise independent authority when they are not subject to or knowledgeable of the requirements of these relevant laws, ordinances or rules. However, contractors may upon occasion and within specific timeframes need to direct city employees on work assignments to ensure proper performance and completion of such assignments in order to achieve the objectives of the contract with the City.

Should it be necessary for an independent contractor to supervise City employees, the contract authorizing such services will specify that the independent contractor will not have the authority to hire, terminate, discipline, or evaluate any classified City employee. Any and all such personnel actions shall be directed to the Human Resources Department. The Human Resources Department will assist the appropriate department in the application of all personnel actions to ensure compliance with the Merit System Ordinance, the Labor Relations Management Ordinance, the Personnel Rules and Regulations, applicable collective bargaining agreements, and any applicable federal, state or local laws dealing with employer/employee relations. No personnel actions will be taken by contractors without the supervision of the Human Resources Department.

In no instance will temporary employment agency employees be allowed to supervise City employees.

This Administrative Instruction is effective immediately.

Jay J. Czar /s/ \_\_\_\_\_ 2/10/03  
 Jay J. Czar, Chief Administrator Date

## February 28, 2003 ADMINISTRATIVE INSTRUCTION NO. 7-35

### SUBJECT: Military Leave - Payment of Insurance Benefits & Wage Differential

#### Background:

The City of Albuquerque Personnel Rules and Regulations provide for Military Leave, and the City Council enacted R-01-351, effective September 11, 2001, which provides for "payment of health insurance benefits and wage differential for City employees serving on active military duty **as a result of the terrorist attack of September 11, 2001**. It is important that all employees be aware of their benefits and responsibilities to the City while serving on Military Leave. Employees should also be made aware of the following:

1. The City policy on Military Leave is stated in the Personnel Rules and Regulations Section 402.2. Section 402.2 C. Military Leave states; "To request a military leave of absence, the employee or his or her designated representative must attach a copy of the orders to a written request for military leave. In the event official orders are not issued the employee will be required to provide verification of attendance from their commander. **All requests must be approved by the Human Resources Director.**"
2. Employees who have insurance benefits will be allowed to continue their benefits and must make payments directly to the Insurance and Benefits Division. The employee is responsible for paying their portion of insurance premiums, and the City will continue to pay the City portion as long as the employee pays the required premium for the duration -of the original orders activating the employee as a result of the September 11, 2001, terrorist attack. If an employee fails to make payments and is delinquent for three (3) pay periods, the insurance benefits will be cancelled at the end of the pay period last paid. A cancellation form will be mailed to the employee's address on file. Payments can be made in one lump sum, monthly or bi-weekly whichever is more convenient for the employee. Payments made by check or money order may be mailed directly to the Insurance and Benefits Office. Payments made by cash must be brought into the Insurance and Benefits Office.
3. PERA awards free military service credit to a PERA member who enlists in the military or who is a member of the military service reserve component that is activated under a federal call to duty, deployment or peacekeeping mission or other declared national emergency. Service credit is granted on a monthly basis. To obtain free military service credit, the PERA member (employee) must meet the following requirements:
  - a. The employee must be entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994.
  - b. The employee must be employed by the City at the time he or she enlists or is activated.
  - c. The City must reemploy the employee within 90 days from the date of discharge from military service.
  - d. Within 30 days of reemployment, the City shall certify in writing the date of termination from military service and the date of reemployment of the employee.
  - e. The employee must complete a PERA affidavit, certifying the military service, and submit a military form DD214 and other information that indicates the dates of service.
  - f. The employee must have been honorably discharged and cannot use the same period of service to obtain or increase a benefit from another state system or from the Educational Retirement System.
4. Employees on approved Military Leave Without Pay will not accrue sick or vacation leave during their military leave of absence.
5. Employees on approved Military Leave Without Pay will not be allowed to work any other paid hours during their

Military Leave (i.e., overtime, compensatory time, etc.). If any exceptions to this provision are needed, the department director must review that exception with the Human Resources Department Director.

If the employee decides to use his or her vacation, military leave with pay, or compensatory time, PERA contributions will continue to be taken from that salary and no free military service credit will be allowed for that time. Intervening military service will not affect an employee's "final average salary" if his or her highest three years salary fall during this intervening military service. "Final average salary" is defined as the highest 36 consecutive, but not necessarily continuous months of service credit.

Employees should be reminded to make sure that they have updated survivor and refund beneficiary information on file with PERA. Employees should be notified that death during intervening military service would be considered non-duty, which means that the survivor beneficiary would receive a pension according to the state statute and rules that apply to nonduty death. If an employee has five or more years of service credit and is married or has a designated survivor beneficiary, the employee's beneficiary may receive a pension that is the higher of 30% of the final average salary, or the amount calculated as if the employee retired the day preceding the date of death under form of payment B using the employee actual accrued service credit.

By law, PERA cannot grant free credit for service if the employee voluntarily reenlists. However, the reenlistment service may still be purchased if the employee has reemployment rights under federal law.

This procedure only applies to employees activated as a result of Operation Enduring Freedom, Noble Eagle, or any security mission related to the September 11, 2001 terrorist attack.

This procedure is effective November 30, 2001, and amended February 24, 2003 (REF: PERA memo dated January 22, 2003) and the duration of this policy will be reviewed annually at the beginning of each fiscal year.

Jay J. Czar /s/\_\_\_\_\_  
Jay J. Czar, Chief Administrative Officer

3/13/03\_\_\_\_\_  
Date

**March 17, 2003**

## **ADMINISTRATIVE INSTRUCTION NO. 7-36**

### **SUBJECT: Obligations of City Employees And Applicants for Employment Who are Sex Offenders**

Sex offenders pose a significant health and safety risk. Rates of recidivism for these offenders are extremely high and treatment and rehabilitation efforts are largely ineffective. The protection of the victims and potential victims of sex offenders in Albuquerque is of paramount importance and the City will do its part to protect potential victims that could come into contact with sex offenders while those offenders are working for the City.

After the date of this instruction, applicants for City employment and current City employees ("Employees") who are registered sex offenders under any applicable law must notify the City in writing that they are registered sex offenders. Additionally, Employees who are registered sex offenders under any applicable law must provide the City with copies of any registration documentation submitted to any governmental entity. City departments must verify the accuracy of the information provided by the sex offender and contact APD immediately if any inconsistencies are identified. Any inconsistency in the information provided to the City and to any other governmental entity is the sole responsibility of the sex offender. Background searches of all Employees who may contact or deal with children in the scope of employment shall be performed by the departments.

City Employees who are sex offenders are also required to demonstrate that they are rehabilitated and no longer pose a threat to the public or in the work place. Sexual offenses constitute crimes of moral turpitude and directly relate to an individuals employment with the City. Employees who are sex offenders will be required to demonstrate they have been rehabilitated. If they have not been rehabilitated they will be subject to termination from employment. The obligation to demonstrate the Employees rehabilitation is a continuing obligation lasting throughout the term of their employment. The City will at a minimum annually review the Employees rehabilitation status, but may elect to review the Employees

rehabilitation status more frequently.

Jay J. Czar /s/ \_\_\_\_\_ 3/17/03  
Jay J. Czar, Chief Administrative Officer Date

**May 6, 2003**

## **ADMINISTRATIVE INSTRUCTION NO. 7-37**

### **SUBJECT: Gender Identity Policy**

The City of Albuquerque acknowledges its continuing commitment to protect individual rights and privileges. The City of Albuquerque also acknowledges its continuing commitment to the principals of equal employment opportunity and equal access to City services as an integral part of the operation of City government. Through this policy the City commits itself to heighten awareness of, and sensitivity to, gender identity issues. The City also establishes through this policy that, in the operation of government, discrimination on the basis of gender identity is prohibited; employees and applicants for employment are entitled to employment opportunities, and consumers of city services are entitled to equal access and equal treatment without regard to their gender identity.

### **DEFINITIONS**

For the purposes of this Administrative Instruction the following definitions apply:

*Gender Identity:* Gender identity or expression shall mean and include a person's actual or perceived gender as well as a person's gender identity, gender related self image, gender related appearance, or gender related expression whether or not that gender identity, self image, appearance, or expression is different from that traditionally associated with a person's sex at birth.

*Transgender:* An umbrella term, which includes transitioning transsexuals and transitioned transsexuals.

*Transitioning Transsexual:* A person who is undergoing sex reassignment treatment. *Transitioned Transsexual:* A person who has completed genital reassignment surgery.

### **EMPLOYMENT**

In addition to other bases of discrimination prohibited by the City in employment and application for employment, discrimination based on gender identity is also prohibited. This includes, but is not limited to, recruitment, hiring, employee health services, wages, disciplinary actions, conditions of employment, and promotion. Transgender employees have the right to comply with sex-specific dress codes according to their gender identity, except that, nothing in this policy will require any City department to allow the occasional dressing in clothing that is conflicting with the person's established legal sex.

### **CITY SERVICES**

In addition to other bases of discrimination prohibited by the City in the access to services and facilities, discrimination based on gender identity is also prohibited. This includes, but is not limited to, recreation, cultural services, senior services, multi-service centers, housing services, and transportation. Except that, competitive sports and sports related records for persons under age twenty-one are exempt.

It is also the intent of the City that there will be no discrimination based on gender identity in the use of restrooms, baths, showers, dressing rooms, or other City facilities publicly or exclusively expressed or asserted by the person seeking to use such restrooms, baths, showers, dressing rooms, or other private accommodations.

Transitioned transsexuals have an equal and binding right to access and safe use of sex specific facilities that include, but are not limited to restrooms, bathrooms, locker rooms, dressing or changing rooms, showers or similar facilities, where the design and use of the facility permit use by an individual without infringing on the privacy of others. The City will make every effort to provide appropriate and equitable accommodations to transitioning transsexuals regardless of where they are on the continuum of gender identity transition. No reasonable accommodation will be required where one is not

possible and/or the City can demonstrate that the accommodation would impose an undue hardship on its operation.

Nothing in this policy should be construed to interfere with the City's duty to protect the health and safety of incarcerated persons. To this end, the prohibition on gender identity discrimination in this policy shall not be construed to impose any duty on the City, its officers, or its employees for breach of which they are liable to any incarcerated person who claims that such breach proximately caused an injury which arose, while such a person was in the custody of the City, from actions of its officers or employees intended to protect the health and safety of the person.

### **COMPLAINT PROCESS**

Individuals who believe that they have been discriminated against because of their gender identity have the right to seek redress. The following procedures are to be used in seeking resolution of such complaints:

#### **a. Employment**

Employees or applicants for employment who believe that they were discriminated against in an employment related action, on the basis of their gender identity, may file a complaint with the Employee Equity Office (EEO). The EEO Office will receive and process employment related complaints. Any City employee who believes that he/she is being discriminated against because of their gender identity may contact the EEO of the Human Resources Department.

#### **b. City Services**

Consumers who believe that they were denied a city service or received unequal treatment, on the basis of their gender identity may seek resolution of their complaint as specified below:

(1) The consumer may notify the department or facilities director of his or her complaint. The director, upon notification of the complaint, will conduct an internal inquiry of the complaint and, as appropriate, attempt resolution of the complaint. If the complaint is resolved, no further action is required and a summary of the complaint and actions taken will be kept in the department's files.

(2) In the event that the complaint is not resolved through the departmental process, or should the consumer elect not to go to the department or facility director, the consumer may file a complaint with the Albuquerque Human Rights Office. The Human Rights Office, on behalf of the City, will accept and process the consumer's complaint as specified below:

(a) An attempt at an initial resolution of the complaint will be made between the consumer and the department or facility director.

(b) If resolution is not possible, the Human Rights Office will initiate an investigation on behalf of the City. Upon completion of its investigation the Human Rights Office will submit to the Chief Administrative Officer a written report of its investigation and findings, together with recommendations, for review and a final decision.

(c) The decision of the Chief Administrative Officer will be final.

### **RETALIATION**

Retaliation against any individual for filing a discrimination complaint based on gender identity or assisting, testifying or participating in the investigation of such a complaint is a violation of this policy.

### **TRAINING**

The Training and Organizational Excellence Division of the Human Resources Department, with input from the Human Rights Office, will develop and implement a gender identity-training program for management, supervisory, and non-supervisory employees. The training will be provided at New Employee Orientation, Supervisory Development training and also as a stand-alone course.

### **POSTING**

The City will post in conspicuous places available to employees and the general public notices setting forth provisions of this gender identity discrimination policy.

Jay Czar /s/ 5/6/03  
 Jay Czar, Chief Administrative Officer Date

MEMORANDUM OF UNDERSTANDING  
 BETWEEN  
 THE CITY OF ALBUQUERQUE AND THE ALBUQUERQUE HUMAN RIGHTS BOARD

This Memorandum of Understanding is an agreement between the City of Albuquerque and the Albuquerque Human Rights Board. The purpose of the Memorandum of Understanding is for the Albuquerque Human Rights Board to assist the City in investigating internal discrimination complaints based on gender identity, sexual orientation, or mental disability that may be filed by consumers against the City in accordance with Administrative Instructions 7-14-land 7-37.

The Albuquerque Human Rights Board through the Albuquerque Human Rights Office will:

Accept, process, and, as appropriate, investigate discrimination complaints made to the Albuquerque Human Rights Office by consumers who believe that they were denied a City service or received unequal treatment, on the basis of their gender identity, sexual orientation or mental disability.

The Albuquerque Human Rights Office will attempt an initial resolution of the complaint between the consumer and the department or facility director.

If resolution is not possible, the Human Rights Office will initiate an investigation on behalf of the City. Upon completion of its investigation the Human Rights Office will submit to the Chief Administrative Officer a written report of its investigation and findings, together with recommendations, for review and a final decision.

This Memorandum of Understanding shall be in effect until such time as the City of Albuquerque establishes an internal process to handle consumer complaints based on gender identity, sexual orientation or mental disability, or the Albuquerque Human Rights Ordinance is amended to include such bases, and/or the City of Albuquerque and the Albuquerque Human Rights Board mutually terminate the agreement.

APPROVED:

<u>Jay Czar /s/</u>	<u>5/6/03</u>	<u>Jennifer Yazawa /s/</u>	<u>5/6/03</u>
Jay Czar	Date	Jennifer Yazawa	Date
Chief Administrative Officer		Albuquerque human Rights Board	

**October 29, 2004**  
**ADMINISTRATIVE INSTRUCTION NO. 7-38 (Revised)**

**SUBJECT: Military Leave Active Duty**

The City of Albuquerque values the contributions made by employees who are members of the National Guard, Air National Guard or any organized reserve unit of the Armed Forces of the United States, including the Public Health Service, and recognizes their need to participate in annual training. The City of Albuquerque authorizes modification of Section 402.2 of the Personnel Rules and Regulations to provide an additional fifteen (15) days of paid military leave for City employees who are members of any organized reserve unit of the Armed Force of the United States mobilized by the President of the United States in support of operations overseas and in defense of our nation. This additional paid leave is for the federal fiscal year 2005 (October 1, 2004 through September 30, 2005).

National Guard members who have been, or may be mobilized, may have already utilized their allotted 15 days of military leave for other active duty or for the purpose of attending organized courses of instruction or training. The additional fifteen (15) days of military leave is necessary for the training required prior to deployment overseas. Pre-deployment training is critical to a soldier's safety and the security of their comrades when in combat or other hostile situations.

Incumbents in the Reserves and National Guard, except those in emergency or temporary status, who are called to active duty during the current federal fiscal year, shall be granted the regular fifteen (15) days of Military Leave. This leave,

normally used for training purposes, can also be used for active duty. In addition, the City of Albuquerque has authorized an additional fifteen (15) days Military Leave for the current Federal fiscal year.

A workday is considered eight (8) hours for purposes of military leave. Military leave is paid at the employee's straight-time rate of pay for the forty (40) hour workweek. This leave is in addition to other authorized leave, when an employee is ordered to active duty training with such units. Employees working part-time will receive military leave on a prorated basis. When Military Leave has been exhausted, incumbents have the option of being placed on Leave Without Pay (LWOP) or using accrued Annual Leave. Incumbents who exhaust their Annual Leave shall then be placed on LWOP for the remainder of time they are on active duty. Incumbents shall not receive pay or accrue leave while on LWOP.

---

James B. Lewis  
Chief Administrative Officer

## **September 20, 2004**

### **ADMINISTRATION INSTRUCTION NO. 7-39**

#### **SUBJECT: Mandatory Annual Management/Supervisory Training**

**BACKGROUND:** City Personnel Rules and Regulations (Section 301.2) states that employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency, and effectiveness.

The Merit System Ordinance (§ 3-1-1 a, f, & h) mandates the Director of Human Resources, under the general direction of the Chief Administrative Officer, to exercise leadership in and encourage the development of effective personnel administration within the departments, agencies, and special programs in the city service, and make available the resources of the Human Resources Department to develop and establish training and educational programs for persons in the cityservice.

**POLICY- Mandatory Annual Management/ Supervisory Training:** It is the policy of the City of Albuquerque that all management employees with supervisory responsibilities shall be required to attend sixteen hours of management/supervisory development training on an annual basis as designated by the Human Resources Director with final approval of the CAO.

The intent of the program is to provide all City managers who have supervisory responsibilities with a forum to stay current on relevant management issues and develop new competencies that will be deployed in the administration of public business with professional competence, efficiency, and effectiveness.

The Director of Human Resources is responsible for designating a City Learning Council (CLC). The CLC will recommend curriculum development, venue selection, and methods of deployment for the annual training program to the Director of Human Resources. The Human Resources Department Center for Learning, Education, and Development will be responsible for providing guidance and technical assistance to the Learning Council and for administering the approved program.

James B. Lewis	9/21/04
James B. Lewis	Date
Chief Administrative Officer	

## **December 2, 2004**

### **ADMINISTRATIVE INSTRUCTION NO. 7-40**

#### **SUBJECT: Volunteer Screening**

Volunteers provide important assistance to the City of Albuquerque in furthering the goals and objectives of city programs and delivering City services to the public. The City has a long and successful record of cooperation with Volunteers. Volunteers include all volunteers and community service assignees ("Volunteers") that work with or for the City without monetary compensation. Individuals who perform services for eight hours or less in one year are defined as

"Short-Term Volunteers" under this instruction. City Departments are encouraged to continue cooperative efforts with Volunteers because their services have been invaluable to the City. In order to insure the continued viability and success of Volunteer programs, the City must insure that it does not allow a Volunteer program of the City to be used by an ill intentioned person as a means to endanger the safety of the public, and particularly the safety of children. The City must take reasonable precautions to ensure that convicted criminals and sexual predators do not use a Volunteer position to commit further crimes. Just as every effort is made by the City to insure the City work force is free of employees who may be dangerous to the public and children, the same measures must be taken with Volunteers. This instruction applies to current and future Volunteers. All Volunteers must submit an executed written application to the Department(s) they will be working under. Current Volunteers and new Volunteers must complete this application. Short-Term Volunteers are not required to submit an application.

## **VOLUNTEER PARTICIPATION IN CITY PROGRAMS**

All Volunteers will be screened by the City to determine their suitability to participate in City programs. Any Volunteer may be rejected for any reason, and no reason for the rejection need be given to a Volunteer or applicant. Volunteers who are convicted sex offenders shall not be allowed to be Volunteers for the City. Volunteers with other convictions or pending charges will be reviewed on a case-by-case basis and will be considered for a Volunteer position if they do not pose a threat to the public. Short-Term Volunteers will at all times during the Volunteer function be supervised, observed and within the control of a paid City employee authorized to be alone with children. The Department Director or the Mayor may dismiss and further preclude any Volunteer from further participation in any City Volunteer program for any reason or no reason at all.

### **LEVEL 1: VOLUNTEERS WITHOUT ACCESS TO CHILDREN**

Level 1 Volunteers shall submit an application to the City on a form approved by the Human Resources Department. All future Volunteers will submit the application before beginning service and all current Volunteers will submit an application within thirty days from the date of this instruction. The City shall not use any Volunteer who fails to submit a complete application. The application will include the applicant's name, any former name and date of birth. The application shall state that the Volunteer consents to a background investigation and waives and releases all liability against the City for damages incurred in the scope of the Volunteer function.

Sex offenders pose a particular risk to the public. The City of Albuquerque shall not use any person as a Volunteer who appears on any Megan's law website as a sex offender or is otherwise registered as a sex offender anywhere. The Department reviewing a Volunteer will verify that the Volunteer is not a registered sex offender under any State's Megan's Law. A sex offender is any individual included as a sex offender under the Megan's law of any state. The inquiry concerning whether the Volunteer is a convicted sex offender shall be approved by the Human Resources Department and undertaken in a reasonably reliable manner including but not limited to clearing the Volunteer by name (former names and aliases) on Megan's law websites. Examples of acceptable websites are [www.nmsexoffender.dps.state.nm.us](http://www.nmsexoffender.dps.state.nm.us) and [www.klaaskids.org](http://www.klaaskids.org). The inquiry shall be conducted as often as reasonably necessary and at least once each calendar year for all Volunteers. The Department Director may dismiss and further preclude any Volunteer from further participation in any City Volunteer program if the Volunteer engages in any conduct reasonably perceived as dangerous to children or otherwise disruptive to the City or other Volunteers.

### **LEVEL 2: VOLUNTEERS WITH ACCESS TO CHILDREN**

For purposes of this instruction, the terms "Adult," "Alone With a Child" and "Child" shall have the same meaning those terms have under the Albuquerque Sex Offender Registration and Notification Act ("ASORNA"). The Departments shall immediately compile a written list of Volunteers that could be Alone With a Child in the scope of the Volunteer function. The list will be updated to include new Volunteers. The Department must immediately submit the list and applications of the Volunteers on the list to the Albuquerque Police Department for a background investigation. The background investigation shall be substantially the same as that allowable on any City of Albuquerque employee that may be Alone with a Child in the scope of employment. The Albuquerque Police Department may reject any Volunteer applicant deemed to be a risk to the public or children. No person shall serve as a Volunteer if ever convicted of a sex offense under ASORNA or a substantially similar offense in any jurisdiction. Background investigations may be conducted as often as reasonably necessary and at least once each calendar year for all Volunteers.

Level 2 Volunteers shall submit an application to the City on a form approved by the Human Resources Department. All future Level 2 Volunteers will submit the application and all current Level 2 Volunteers will submit an application within ten days from the date of this instruction. The City shall not use any Level 2 Volunteer who fails to submit a complete



application. On the application, the Level 2 Volunteer must swear that they have not been convicted of a sex offense against any person at any time. A sex offense means any sex crime so defined by the Megan's law of any jurisdiction or any sex crime similar to the crimes listed as sex offenses under the New Mexico Sex Offender Registration and Notification Act. On the application, the Level 2 Volunteer must also indicate whether they have been convicted of a felony or other crime punishable by a jail term of more than one year and state the nature and date of that crime. The application must include the Level 2 Volunteer's name (including all former names and aliases), gender, address, birth date, social security number and physical description. The Level 2 Volunteer must additionally list every State of residence or arrest. If the Level 2 Volunteer will be using a non-City vehicle for Volunteer duties, the Level 2 Volunteer must provide a driver's license number and the license plate number of the vehicle(s) that will be used. The application shall state that the Level 2 Volunteer consents to a background investigation as a prerequisite to volunteering with the City, and waives all claims for liability against the City for injury or damage arising out of volunteer work for the City that are a result of his or her own actions or negligence. The Application shall notify the Level 2 Volunteer that he has a duty to immediately notify the City upon arrest for a felony or any offense. Any person who fails to submit the application shall not serve as a Volunteer for the City of Albuquerque. If the Level 2 Volunteer is a Child, the application must be approved and signed by the applicant's parent or legal guardian.

APPROVED:

---

James B. Lewis, Chief Administrative Officer

**April 6, 2005**

## **ADMINISTRATIVE INSTRUCTION NO. 7-41**

### **SUBJECT: COMMUTING DURING THE COORS/I-40 RECONSTRUCTION**

City employees living on the west side will be sharing their traffic "woes" with all west side residents during the reconstruction of Coors/I-40. The City is encouraging private employers to work closely with their employees to develop ride-sharing and flex schedules and to support the use of our newly-enhanced bus services to mitigate rush-hour traffic.

Ride-sharing and the use of public transportation are two options available to City employees. Employees are strongly encouraged to take advantage of the \$14 monthly transit pass available to City employees. The Transit Department can assist employees with ride-sharing arrangements.

Telecommuting will not be offered to City employees during the construction period. The City has an obligation to ensure that employees are available during normal business hours for citizens who have a need to conduct business with us. When it makes good business sense or if it could increase customer service, flexing employees regular work schedules to start up to one hour earlier or to leave one hour later may be considered. Department directors will have the discretion to determine if such schedule changes are in the best interests of our residents and employees.

James B. Lewis  
Chief Administrative Officer

**February 21, 2006**

## **ADMINISTRATIVE INSTRUCTION NO. 7-42**

### **SUBJECT: Automated External Defibrillator (AED) Program**

#### **Background:**

The City, through its Executive Safety Committee and with the cooperation and assistance of AFD, has established an Automated External Defibrillator (AED) program as part of the City's commitment to the health and well-being of our citizens and employees.

This Administrative Instruction establishes the policies and procedures that will govern the AED program City-wide and supersedes any and all earlier instructions, policies or procedures, written or verbal. This Administrative Instruction

applies to all City departments and all City employees.

## **Procedures:**

### **Participation in AED Program**

It is not mandatory or necessary that every City department participate in the AED program. Departments that offer programs or services to large numbers of the general public (e.g. Aviation), that offer programs involving physical exertion (e.g. Community Centers), or that offer programs to the frail or elderly (e.g. Senior Centers) are likely participants in the AED program.

If a Department wishes to participate, the Department Director must request initial approval in writing to implement an AED program. The written request should be addressed to the Executive Safety Committee and should explain why participation is desired, the expected benefits of participation, proposed sites for AED equipment, acknowledgement that only standardized equipment will be acquired and used in the program and a commitment to abide by the requirements of the AED program. The written request must include a list of Department employees, with their work site and contact information, whom the Director proposes to identify as the primary AED program coordinator, the secondary AED program coordinator and responders for the Department.

If the Executive Safety Committee grants initial approval, the request will be submitted to the Medical Director for Emergency Medical Services at AFD. The decision to approve or disapprove the implementation of an AED program in any specific department, or unit of a department, shall be made by the Medical Director, whose decision is final. If approved, the Medical Director will write the necessary prescription for use of AEDs in the requesting Department.

### **Operating Guidelines for Approved AED Programs in Departments**

The Medical Director will oversee all aspects of the approved Department's AED program including, but not limited to, training, emergency medical services coordination, protocol approvals, AED deployment strategies and other program requirements.

No City employee will be authorized to use AED equipment unless they have been authorized by the Medical Director to do so.

The City Employee Health Services has been designated by AFD as the AED training center for City employees who wish to become authorized to use AED equipment. All City employees identified as responders must receive required training in cardiopulmonary resuscitation (CPR) and the use of AED equipment from the City Employee Health Center.

The AED program coordinator for a Department will:

- Identify Department employees for selection and training as AED responders;
- Provide a list of AED proposed locations to AFD for approval and will notify AFD immediately of any need to change an existing location(s) or the need for additional locations. The placement of AED equipment at a site will be determined by AFD only;
- Coordinate initial and refresher training for identified responders with the City Employee Health Services. A copy of this Administrative Instruction shall be provided to each City employee during training as an AED responder;
- Insure that AED equipment is maintained and tested according to the manufacturer's guidelines;
- Monitor the effectiveness of the AED program within the Department;
- Report not less than quarterly to the Executive Safety Committee on each Department incident involving the use of AED equipment;
- Communicate with the Medical Director and AFD on issues related to medical emergency response, including post-event reviews;

- Assist the Department in establishing an approved emergency action plan, infection control procedures for universal precautions and AED equipment use procedures, and insure compliance with those plans and procedures;
- Not less than once each calendar year, conduct and document a system readiness review of training records and equipment operation and maintenance records. The report will be provided to the AFD and the Executive Safety Committee.

Department responders will be responsible for activating the internal emergency response system and providing basic life support including AED, CPR and first aid according to the responder's training and experience.

Other Department staff will be responsible for receiving emergency medical calls from within the Department, activating the emergency response plan to include, but not necessarily limited to, calling 911, deploying AED responders to the location of the emergency, and assigning a person to meet responding EMS vehicles and directing EMS personnel to the site of the medical emergency.

#### **Use of City-owned AED Equipment by Non-City Employees**

Non-City volunteer responders may, at their discretion, provide voluntary assistance to victims of medical emergencies on City property. The extent to which these individuals respond shall be appropriate to their training and experience. The emergency medical response of these individuals may include CPR, AED or medical first aid.

#### **Selection of AED Equipment**

The AFD shall select the AED equipment to be used City-wide. Effectiveness and efficiency of the AED program is enhanced by establishing a standard for AED equipment available on City property.

#### **EFFECTIVE DATE and TRANSITION PROVISIONS:**

This Administrative Instruction is effective immediately.

Any City Department that has AED equipment in place in one or more of their facilities on the effective date of this Administrative Instruction must notify AFD of that fact and develop a plan, with the concurrence of the Medical Director and AFD, to be fully in compliance with this Administrative Instruction within ninety (90) days of the effective date.

---

Bruce J. Perlman, Ph.D  
Chief Administrative Officer

**February 21, 2006**

## **ADMINISTRATIVE INSTRUCTION NO. 7-43**

### **SUBJECT: HIRING OF PERA RETIREES**

No City department shall make an offer of employment to an individual who has retired under the provisions of PERA. The only exception to this Administrative Instruction relates to the hiring of persons to fill:

- 1) Public safety positions, limited to sworn and non-sworn police officers, including aviation and open space officers, certified fire fighters, emergency medical technicians, emergency dispatch personnel and corrections and security officers. Persons offered employment in these excepted positions shall be limited to employment at a level equivalent to a patrolman, first class; or
- 2) positions determined in writing by the CAO to be mission critical.

This administrative instruction is effective immediately.

---

Bruce J. Perlman, Ph.D.  
Chief Administrative Officer

**March 13, 2006**

## **ADMINISTRATIVE INSTRUCTION NO. 7-44 (Revised July 1, 2007)**

### **SUBJECT: Incentive Program for Positions Which are “Difficult to Recruit”**

The City has established an incentive program to help address the challenges faced by the City in recruiting highly qualified, performance-orientated candidates for specific classifications that have been identified as “difficult to recruit”. These classifications are primarily in the areas of public safety, engineering, accounting, and information technology; other classifications may be added or deleted from time to time by the CAO based on organizational need. “Difficult to recruit” classifications are defined as those that are highly competitive in the labor market due to specialized skills and or certifications or unusual market demands or those which experience high turnover making it difficult to maintain adequate staffing levels to provide critical City services.

All recruitment incentives, and the classifications to which they will apply, must be approved in advance in writing by the CAO prior to discussion with any candidate or recruiting effort proposing to offer one or more of these incentives. Recruitment incentives may be discontinued at any time in the sole discretion of the CAO. The CAO will exercise final authority regarding the implementation and administration of this incentive program.

The following recruitment incentives may be offered in appropriate circumstances with the written concurrence of the CAO:

#### **HIRING BONUS:**

Police Officer Cadets and Laterals: A maximum incentive of up to \$5,000 may be offered, payable as follows: \$1,500 at the successful completion of the fourth week of academy training, \$2,000 at successful completion and graduation from academy training, and \$1,500 at the successful completion of the On-the-Job Training (OJT) period. A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as a sworn officer at any time in the prior eight years.

Police (911/242-COPS) Dispatchers: A maximum incentive of up to \$1,500 may be offered, payable as follows: \$750 after six months of service from date of hire subject to successful completion of classroom and On-the-Job training (OJT) and \$750 at the successful completion of their City probationary period (one year of continuous service from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as a police dispatcher at any time in the prior three years.

Animal Control Officers: A maximum incentive of up to \$3,500 may be offered, payable as follows: \$1,500 at the successful completion of their City probationary period (six months of service from date of hire) and \$2,000 at the successful completion of twelve months of continuous City service (one year from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as an animal control officer at any time in the prior three years.

Degreed Engineering Professionals: A maximum incentive of up to \$2,500 may be offered, payable as follows: \$1,000 at the successful completion of their City probationary period (six months of service from date of hire) and \$1,500 at the successful completion of twelve months of continuous City service (one year from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as a degreed engineering professional at any time in the prior five years.

Degreed Accountants and Other Financial Professionals: A maximum incentive of up to \$2,500 may be offered, payable as follows: \$1,000 at the successful completion of their City probationary period (six months of service from date of hire)

and \$1,500 at the successful completion of twelve months of continuous City service (one year from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as a degreed accountant or other financial professional at any time in the prior five years.

Information Technology Specialties: A maximum incentive of up to \$2,500 may be offered, payable as follows: \$1,000 at the successful completion of their City probationary period (six months of service from date of hire) and \$1,500 at the successful completion of twelve months of continuous City service (one year from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque in any information technology specialty at any time in the prior five years.

Veterinary Technicians: A maximum incentive of up to \$2,500 may be offered, payable as follows: \$1,000 at the successful completion of their City probationary period (six months of service from date of hire) and \$1,500 at the successful completion of twelve months of continuous City service (one year from date of hire). A lower incentive amount may be offered, and will be paid on a prorated basis according to the above schedule. No incentive may be offered to any person who was employed by the City of Albuquerque as a veterinary technician at any time in the prior five years.

For the purposes of this Administrative Instruction, “successful completion” of any period of time required for the payment of a hiring bonus must be evidenced by the completion of a Performance Evaluation Guide showing that performance expectations were “met” or the completion of an Employee Work Plan, whichever is appropriate. For calculating periods of time under this section, continuous periods of illness or absence in excess of ten working days will not be counted as “continuous City service”.

Any hiring bonus paid under this section shall be treated as an “advance” to be amortized for repayment should an employee voluntarily resign or be terminated, except through a layoff, from an incentive eligible position within thirty-six (36) months of being hired.

#### **SICK LEAVE TRANSFER:**

Employees who leave another employer to accept a “difficult to recruit” position in the City may be credited with up to 96.2 hours (bi-weekly accrual of 3.7 hours for 26 pay periods) of sick leave at the completion of their City probationary period. The actual amount to be credited may not exceed the maximum of 96.2 hours and shall be based on documentation provided by the employee indicating the sick leave balance in effect, net of any “payout” or “conversion” of sick leave, at the date of the employee’s termination of their previous employment.

#### **VACATION ACCRUAL RATE:**

Employees hired into “difficult to recruit” positions in the City will accrue vacation leave at the rate applicable to employees with five years of experience with the City provided they have at least five years of experience with one or more previous employers in a position comparable to the one into which they are hired. The enhanced accrual rate shall go into effect at the completion of the employee’s probationary period. Accrued vacation in excess of that which would have been accrued based on the employee’s hire date with the City shall not be payable at the time of the employee’s voluntary resignation or termination, except in the case of a layoff, prior to completing five years of service with the City.

#### **FINDERS FEE:**

Any City employee who has referred a candidate not currently or previously employed by the City for employment into a “difficult to recruit” classification may be paid a finders fee of up to \$500. Incentive payments for such referrals will be made only after the referred candidate is hired and successfully completes their OJT with respect to police officer cadets and laterals or successfully completes six months of City service for all other classifications with a “meets expectations” evaluation. The following conditions apply for a City employee to be eligible to receive the finders fee:

- The referring employee must be identified on the candidate’s original application for employment; and
- The candidate cannot have been a City employee within the last eight (8) years.

No employee whose regular job duties include recruiting, hiring or training of new employees will be eligible for the finders fee. No finders fee will be payable with respect to a candidate who has retired from the PERA or ERA system.

The determination of whether a finders' fee is to be paid and the amount to be paid will be made by the director of the Department that hired the candidate.

#### **STARTING COMPENSATION LEVELS:**

Candidates for "difficult to recruit" classifications at the M-14 level or above, or equivalent level, may be offered a beginning compensation level in excess of the mid-point for that classification with written justification and written approval of the CAO. In addition, these positions may be advertised reflecting the entire salary range for that classification in an effort to attract a larger pool of qualified candidates.

#### **RELOCATION/MOVING EXPENSE ASSISTANCE:**

Candidates for "difficult to recruit" classifications at the M-15 level or above, or equivalent level, may be eligible for financial reimbursement for certain IRS qualified moving expenses. See the Travel Regulations for details of eligible costs and expense limitations.

#### **CONDITIONS APPLICABLE TO INCENTIVE PROGRAM:**

The total dollar amount of incentives offered under this program to any single candidate shall not exceed \$5,000 and shall be delineated in a written agreement signed by the candidate, the Department director and the CAO in advance of, or concurrently with, the Recommendation of Hire.

Any incentive proposed to be paid under the terms of this program shall be payable from the existing fiscal year budget of the Department proposing to offer the incentive to both the candidate and any City employee eligible for a finders fee under this program. No budget line item shall be proposed or approved to accommodate this incentive program.

All payments to candidates or employees under this Administrative Instruction shall be treated as taxable income on the date paid, and subject to all normal withholdings and deductions.

#### **EFFECTIVE DATE; TRANSITION RULE**

This Administrative Instruction will apply only to prospective City employees. Any person to whom an offer of employment has been made on or before the effective date of this Administrative Instruction, as revised, is not eligible for any hiring incentive under this program.

---

Bruce J. Perlman, Ph.D.,

Chief Administrative Officer

## **October 1, 2006 ADMINISTRATIVE INSTRUCTION NO. 7-46**

**SUBJECT: Application of Merit System Ordinance Provisions to Certain Unclassified Employees**

#### **Background:**

This Administrative Instruction modifies certain provisions of the Personnel Rules and Regulations with respect to certain employees serving at the pleasure of the Mayor in unclassified, at-will positions. This Administrative Instruction applies to the Chief Administrative Officer and other unclassified employees designated in writing by the CAO, collectively referred to in this Administrative Instruction as "unclassified executive management".

#### **Policy:**

Section 306.2 of the Personnel Rules and Regulations provides that unclassified employees are entitled to all of the rights and benefits to which classified employees are entitled except for the rights of disciplinary actions, the grievance resolution procedure, appeals and layoff. However, performance expectations with respect to unclassified executive management differ materially from performance expectations for those in the classified service and other unclassified positions. Therefore, it is appropriate to modify certain provisions of the Personnel Rules and Regulations as they apply to unclassified executive management positions.

#### **Procedures:**

As a condition of employment, unclassified executive management personnel are expected to work overtime on a regular basis including, but not limited to, early morning and late evening meetings, and on weekends and holidays. Under the provisions of the Fair Labor Standards Act, unclassified executive management personnel are not entitled to be paid overtime regardless of the number of hours worked in a regular work week. In addition, the Fair Labor Standards Act requires that they be paid for a full day unless they are absent from duty for the full day.

Unclassified executive management personnel are generally entitled to leave with pay as provided in Section 401 of the Personnel Rules and Regulations. Unclassified executive management staff shall notify the CAO, or their immediate supervisor when appropriate, of their desire for paid leave.

Unclassified executive management personnel are entitled to a maximum of eight (8) hours of birthday leave as provided in Section 401.1 of the Personnel Rules and Regulations.

Unclassified executive management personnel are entitled to accrue vacation leave on a biweekly basis from the date of current employment as provided in Section 401.2 of the Personnel Rules and Regulations. However, because unclassified executive management employees are often unable to schedule time away from their duties, the provision of Section 401.2 requiring that any vacation leave accrual in excess of seventy-eight (78) biweekly accruals will be dropped from their record at the end of the pay period containing December 31 does not apply to unclassified executive management staff for vacation leave accrued while the employee is an unclassified executive management employee. All vacation leave accrued and unused while an unclassified executive management employee will be paid without reduction when the unclassified executive management employee is separated from city employment.

Unclassified executive management personnel are entitled to paid holiday leave as provided in Section 401.3 of the Personnel Rules and Regulations. If an unclassified executive management employee wishes to take any holiday as a floating holiday, the maximum number of hours that may be floated for any specific holiday is eight (8) hours. An unclassified executive management employee may not float less than two (2) hours on a holiday.

Unclassified executive management personnel are entitled to sick leave as provided in Section 401.4 of the Personnel Rules and Regulations with the following modification. Unclassified executive management personnel who are absent from duty for a portion of a regularly scheduled work day due to scheduled health care appointments for examination, evaluation and/or treatment for themselves, their spouse, domestic partner, son, daughter, or parent are expected to complete their assigned responsibilities and are not required to report the use of accrued sick leave.

Unclassified executive management employees are subject to the provisions of Section 401.4.C related to Sick Leave Conversion on the same terms as classified employees. However, Section 401.4.E is modified to allow unclassified executive management employees to convert accumulated sick leave in excess of 500 hours on the basis of three (3) hours of sick leave to two (2) hours of cash payment at the time of separation from city employment. This conversion option pertains only to sick leave accumulated while the employee is an unclassified executive management employee.

Unclassified executive management employees are not eligible to request a donation of leave under the provisions of Section 401.5 of the Personnel Rules and Regulations except from other unclassified executive management employees.

Unclassified executive management employees are entitled to the provisions of Section 401.8 of the Personnel Rules and Regulations. Requests to attend job-related conferences, meetings or seminars, regardless of the location, should be directed to the CAO or the unclassified executive management employee's immediate supervisor.

Unclassified executive management employees are not entitled to educational leave as provided in Section 401.9 of the Personnel Rules and Regulations.

Unclassified executive management employees are not eligible and may not be granted managerial leave under the provisions of Section 402.7 of the Personnel Rules and Regulations while they are an unclassified executive management employee. Employees who have been promoted or transferred from the classified service or an unclassified position to an unclassified executive management position will be allowed to use any managerial leave awarded to them prior to the promotion or transfer.

Unclassified executive management employees are not eligible for standby time under Section 713 of the Personnel Rules and Regulations. However, unclassified executive management employees are expected to keep their supervisor advised as to where he or she may be reached at all times.

Unclassified executive management employees are not entitled to longevity pay. Employees who are promoted or transferred to an unclassified executive management position on or after July 1, 2006 from the classified service, where they were entitled to longevity pay, will not be entitled to receive longevity pay effective with the date of their transfer or promotion. Employees who were promoted or transferred to an unclassified executive management position prior to June 30, 2006 from the classified service, where they were receiving longevity pay, will be entitled to continue to receive longevity pay until November 30, 2009.

Compensation and compensation adjustments for unclassified executive management employees shall be established by the CAO, in consultation with the Mayor. When an unclassified executive management employee is entitled to return to a classified position and elects to do so, their compensation shall be adjusted as appropriate.

### **Effective Date; Transition Provisions**

This Administrative Instruction is effective retroactively to January 1, 2006.

---

Bruce J. Perlman, Ph.D

Chief Administrative Officer

#### **Disclaimer:**

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2002 American Legal Publishing Corporation  
[techsupport@amlegal.com](mailto:techsupport@amlegal.com)  
1.800.445.5588.